

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-oOo-

In re: Methyl Tertiary Butyl
Ether ("MTBE") Products
Liability Litigation

Master File No.
1:00-1898

This Document Relates To:

Case No.
MDL 1358(SAS)

City of Fresno
v. Chevron U.S.A. Inc., et al.,
Case No. 04 Civ. 4973

COPY

DEPOSITION OF JATINDER PAUL DHILLON

August 11, 2011 at 9:00 (9:05) a.m.

Before: ERIC L. JOHNSON
RPR, CSR #9771

Taken at:
Fresno, California

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1 Q. I'm sorry. Is that yes?
 2 A. Yes.
 3 Q. Just to get an answer out loud. Thank you.
 4 Do you recall what instructions you were given
 5 by the area rep about how to respond to a gas leak or
 6 spill at the station? What did they tell you to do, in
 7 other words?
 8 A. They -- they told us if spill happen what we
 9 are supposed to do, how to clean up, and if it was more
 10 than that we are to call the fire department, or
 11 whatever. Details and everything was in that book.
 12 Q. When you say how to clean up, do you remember
 13 anything more specifically about how you were told to
 14 clean up?
 15 A. Small spill or large spill?
 16 Q. Start with a small spill.
 17 A. Okay. We put like a cat litter and we have a
 18 drum there which is picked up by a -- some company who
 19 used to take care of those -- what you call -- we
 20 dispose them through one company.
 21 Q. When you say it was a cat litter, we have heard
 22 some people talk about a product that was like kitty
 23 litter.
 24 A. Like kitty litter, yes.
 25 Q. Do you remember the name of the product that

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1 you were using?
 2 A. No. No.
 3 Q. Were you the one responsible for buying that
 4 cat litter-type product?
 5 A. We buy those, yes.
 6 Q. Do you recall if you were using that cat
 7 litter-type product at 2619 South East Avenue?
 8 A. Yes.
 9 Q. Do you recall how large of a bag or container
 10 that cat litter product came in?
 11 A. I think they come in 25 pounds, something like
 12 that.
 13 Q. Do you recall how often that would need to be
 14 replaced that you would have to buy some more product?
 15 A. When we finish it.
 16 Q. Do you recall how often that was on average?
 17 A. I have no answer for that.
 18 Q. I mean, did it happen every so many months or
 19 years, or do you have --
 20 A. All depends upon the spill. Sometimes it's a
 21 spill we use it; sometimes months we don't have any
 22 spill and we don't use it.
 23 Q. So you mentioned that after it was used you
 24 said it was put in a drum that was picked up by a
 25 company?

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1 A. Right.
 2 Q. So was that a container that was used just for
 3 the purpose of that cat litter product?
 4 A. Yes. Yes.
 5 Q. Do you have a recollection as to what company
 6 was used to pick that up at --
 7 A. I don't --
 8 Q. -- 26 -- one second here.
 9 A. Sorry.
 10 Q. -- at 2619 South East Avenue?
 11 A. No.
 12 Q. Okay. I am going to try to just make sure we
 13 are clear what station we are talking about --
 14 A. Right.
 15 Q. -- since I think you have had five. If you are
 16 ever not clear, please let me know. I mean, we are --
 17 we are mostly going to be talking about the East Avenue
 18 station, but if you are ever not clear, please indicate.
 19 A. Yes.
 20 Q. In fact, why don't we -- why don't I just
 21 say if we refer to the station, we are referring to
 22 2619 South East Avenue. Is that fair?
 23 A. That's fair.
 24 Q. All right. Now, you mentioned a moment ago, I
 25 think you asked about a small spill versus a large

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Deposition of Jatinder Paul Dhillon / August 11, 2011

1 A. No, I don't remember.

2 Q. When you bought the station was it branded
3 Texaco at that point?

4 A. Yes.

5 Q. Did the branding on the station ever change
6 over the years?

7 A. Yes.

8 Q. What did it first change to?

9 A. Because Shell and Texaco is bought by Shell, so
10 it was Shell, and it has been Shell after that.

11 Q. Do you recall approximately what year it
12 changed to Shell?

13 A. I don't remember.

14 Q. Do you recall if that was in the '90s or 2000s?

15 A. I -- I am not sure. I don't know.

16 Q. We may see some --

17 A. Documents I can tell you about? I don't
18 remember.

19 Q. So was the station branded Shell at the time
20 you stopped operating it in 2009?

21 A. Yes.

22 Q. During the time the station was branded Texaco,
23 where were you obtaining gas deliveries from?

24 A. In the beginning we used to buy from Texaco.

25 Q. So when you first took over the station you

39

1 selling you Shell branded gas, or did you have an
2 understanding?
3 A. That's what contract says, yes.
4 Q. So is it correct, maybe if I can summarize it
5 this way, is it your understanding, then, you were
6 always buying company branded gas either from Texaco or
7 then Shell?
8 A. Yes.
9 (Deposition Exhibit 3 marked
10 for identification)
11 MR. EICKMEYER: Let me show you what I am
12 marking as Exhibit 3. Exhibit 2, you can just put
13 aside in the pile if you'd like. Exhibit 3 is the
14 letterhead of Fresno County Health Services Agency,
15 date November 13, 1995, addressed to Mr. Dhillon.
16 Bates is FCDEH-FRESNO-050249 through 050252.
17 Q. Mr. Dhillon, do you recall having received this
18 letter?
19 A. My signature. Yes.
20 Q. And I was going to get to that, on the third
21 page of the packet, Bates ending in 251. Do you
22 recognize your signature where it says "Received By"?
23 A. Yes.
24 Q. And at the bottom of the last page in the
25 packet Bates ending in 252, would that be your signature

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1 years you operated that station?
2 A. No.
3 Q. For item No. 2, it says, "Line leak detectors
4 have not been installed. Detectors must be installed,
5 maintained, and tested annually," end quote.
6 Do you recall taking any action in response to
7 that?
8 A. Yes.
9 Q. What did you do?
10 A. To get the things done what they want us to do.
11 Q. Do you recall if you hired a company or service
12 to --
13 A. Yes.
14 Q. -- install any detectors?
15 A. Yes.
16 Q. Do you recall if you had any conversations with
17 Kerry Oil, Mr. Kerry or the company, as to why there had
18 not been any line leak detectors installed before?
19 A. I think they were not required before that.
20 Q. No. 3 says, "A hazardous materials business
21 plan has not been updated. A current business plan must
22 be submitted to this office," end quote.
23 Do you recall if you took any response in
24 regard to that?
25 A. Yes.

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1 at the bottom left?
2 A. Yes.
3 Q. Now, on the -- going back to the front of the
4 packet, the Bates ending in 249, under your name I see
5 there's an address on Huntington Boulevard. Was that
6 your home address, or what was that?
7 A. That's the landlord's address.
8 Q. Oh, the Pricketts' address?
9 A. Pricketts' address.
10 Q. I want to ask you about some of the numbered
11 items on the first page. It says No. 1, Annual tank
12 test -- sorry. "Annual tank tightness tests have not
13 been performed. Tests must be performed annually," end
14 quote.
15 Do you recall being told this by the county
16 inspector, that there needed to be annual tank tightness
17 tests?
18 A. Yeah, that's what the letter says. Yes.
19 Q. Do you recall if you took any action in
20 response to this letter?
21 A. Yes.
22 Q. Whose responsibility was it during this 1995
23 time frame to conduct tank tightness tests?
24 A. Mine. I was responsible.
25 Q. Did that responsibility ever change during the

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1 Q. What did you do?
2 A. We submitted it.
3 Q. No. 4 says, "Annual tightness tests have not
4 been performed on pressurized product lines," end quote.
5 Do you recall if you took any response to that?
6 A. Yes.
7 Q. What was that?
8 A. If I remember right, this was delayed because
9 we were in process to -- landlord was in process to
10 change the new tanks and the new pipes and everything.
11 That's the reason they are in the permit -- time of
12 getting permits and everything. That's why it was not
13 done timely after that because we were putting in new
14 tanks and new pipes, and all kind of this.
15 Q. Do you recall if anyone from the county ever
16 indicated that Kerry Oil, the previous owners, had not
17 been submitting the information requested here?
18 A. No.
19 Q. Let me ask you, on the very back page of the
20 packet, there's a couple of checked lines. And I think
21 there's one that wasn't mentioned in the cover letter.
22 It is the third X down, about the middle of the page.
23 Says starting with "inventory." You see that line?
24 A. Mm-hmm.
25 Q. I will read that into the record. It says,

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1 "Inventory reconciliation or tank gauging annual summary
2 reports are not being submitted. Annual summary reports
3 must be submitted to this office," end quote.

4 Do you recall if you took any response to that
5 item?

6 A. We gave them the copies. We never knew that we
7 were supposed to, but at that time the law changed, we
8 give them all the copies, yes.

9 Q. Now, when it mentions inventory reconciliation
10 or tank gauging, was there something being done at this
11 time frame, 1995, to check the amount of gas in the
12 underground storage tanks?

13 A. Yes.

14 Q. We have heard from other witnesses about taking
15 a stick measurement. Were you doing that kind of
16 process?

17 A. That time it was stick, yes.

18 Q. Did that later change from stick measurement to
19 something else?

20 A. Something else, yes.

21 Q. Do you recall, did that change when the tanks
22 were replaced or when did that change?

23 A. When the tanks were replaced.

24 Q. What kind of system was used after the tanks
25 were replaced? I am just asking generally, was it an

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1 electronic system?

2 A. Electronic system.

3 Q. During the time the stick measurements were
4 being taken, how often were those taken?

5 A. Every morning.

6 Q. Who is responsible for the stick measurements?

7 A. The employee who opens the store.

8 Q. Was there some kind of reconciliation done to
9 try and determine if what was measured with the stick
10 matched what was expected to be in the tank?

11 A. Yes.

12 Q. Can you describe that process?

13 A. Our bookkeeping system was like that to --
14 because they know how much gas we sold and how much gas
15 we missing from the tank, should match.

16 Q. Was there a particular amount of gallons of
17 discrepancy that would cause reason for investigation if
18 what was measured in the tank didn't match what you
19 expected to be there?

20 A. If it is difference between more than 20, 30
21 gallons, we do check it around there.

22 Q. Do you recall how many times there was a
23 difference of more than 20 or 30 gallons found at the
24 station?

25 A. Never. I don't remember that happening.

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1 (Break taken at 10:06 a.m.)
2 THE VIDEOGRAPHER: This begins videotape No. 2
3 in the deposition of Paul Dhillon. We are on the record
4 and the time is 10:11 a.m.
5 MR. EICKMEYER: Q. Mr. Dhillon, before we go
6 on to the next exhibit, I think you mentioned a moment
7 ago before the break that someone from the company would
8 come by on occasion and look at your purchase records to
9 see you were purchasing gas from the company?
10 A. Yes.
11 Q. When that person came by, was that called an
12 area rep, or what was their title?
13 A. Area rep.
14 Q. Did that area rep ever give you any training
15 about how to respond to a gasoline leak or spill at the
16 station?
17 MR. YBARRA: Objection; asked and answered.
18 THE WITNESS: I already answered this question.
19 They already trained me, they gave me the booklet to do
20 all those kind of things.
21 MR. EICKMEYER: Well, okay. Thank you. I'm
22 sorry. Let me -- let me try to ask it a little better.
23 Q. Beside that initial training that you
24 mentioned, when they would come out to the station
25 periodically, did they ever give you any more training?

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1 A. They send us some videos to update those
2 things, yes, they do.
3 Q. Did they ever give you any different
4 instructions other than using the kitty litter product
5 that you discussed earlier?
6 A. For small spills or what?
7 Q. Right. Did they ever tell you any different
8 way that you should be cleaning up a small spill or leak
9 at the station?
10 A. Yes, there are different ways, too.
11 Q. What else did they tell you beside the kitty
12 litter product?
13 A. Some other product come on the market, to buy
14 those if you want to, or use this products, or different
15 products are available.
16 Q. Did they ever tell you that you should switch
17 from the kitty litter product --
18 A. No.
19 Q. -- to some other one?
20 A. No.
21 Q. Did you continue using the kitty litter product
22 during the entire time you operated the East Avenue
23 station?
24 A. Yes.
25 Q. Approximately how often would the area rep come

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Q. Now, the next sentence says, "Sampling of soils in the vicinity of the former USTs indicated a releases of" -- releases, plural -- "of petroleum product. Subsequent work showed that the leaking USTs had caused extensive soil contamination. We believe the vertical extent of soil impacts have reached the water table," end quote.

Do you recall when you received this letter taking any action in response to this information?

A. Yes.

Q. What did you do?

A. I gave it to Saboor, ASR Engineering to handle this.

Q. Had you heard before this letter that there were releases of petroleum product that had been found to cause soil contamination and reached the water table?

A. Yes.

Q. Now, the next sentence says, "In our review of the case file, we found that petroleum hydrocarbons were detected in soils at the site at concentrations as high as 98,000 mg/kg as diesel, 43,000 mg/kg as TPH-G, 390 mg/kg as benzene and 10,000 mg/kg as methyl T-butyl ether (MTBE)."

As far as the numbers that I just read here, do you recall ever hearing those numbers before you

received this letter?

A. Honestly, we don't really know -- understand what this says over here because we give it to ASR Engineering to handle the problem.

Q. The MTBE that was listed here at the end of the sentence, had you ever heard of MTBE before receiving this letter?

A. I just explain to you because this kind I have no knowledge. Above my head. So we just gave it to Saboor, ASR Engineering to handle this problem.

Q. Well, I am asking a little different question now, not as far as this specific number there. But had you ever heard of MTBE from anywhere before this letter?

A. No.

Q. Do you recall ever hearing or learning that MTBE was used as an additive in gasoline?

A. Yes, I heard that.

Q. Do you recall when you heard that MTBE started being used in gasoline?

A. Started being used?

Q. Right. What year? What time frame?

A. I don't remember.

Q. Do you recall ever hearing that MTBE was no longer being added to gasoline?

A. I remember that.

Q. Do you recall when that occurred?

A. No.

Q. Do you recall if you were ever given any kind of stickers mentioning MTBE to put on the gas dispensers?

A. I think they come -- they put stickers on my pump, yes, long time ago.

Q. Do you recall what those stickers said?

A. I don't remember.

Q. Do you recall where you received those stickers from?

A. I think the gas company did the -- put the stickers there.

A. Do you recall ever being told that gasoline that contained MTBE needed to be handled differently from gas that did not contain MTBE?

MR. YBARRA: Objection; lacks foundation.

THE WITNESS: No, I didn't.

MR. EICKMEYER: Q. Do you recall if you ever received a Material Safety Data Sheet, or MSDS, for gasoline?

A. I don't understand.

Q. Any document called an MSDS, do you remember ever receiving one of those?

A. I don't remember.

1 MR. EICKMEYER: I have got a few follow up. I
2 think I can ask from here, if everybody can hear me.

3 EXAMINATION BY MR. EICKMEYER

4 MR. EICKMEYER: Q. Let me just ask, sir, I'm
5 not sure if we clarified. We talked before about, I
6 think you called them area reps that would come by on
7 occasion?

8 A. Yes.

9 Q. During the years it was a Texaco branded
10 station, were those area reps coming out from the Texaco
11 company?

12 A. Yes.

13 Q. During the years it was a Shell branded
14 station, were those area reps from the Shell Company?

15 A. Yes.

16 MR. EICKMEYER: Okay. Nothing further. Thank
17 you.

18 MR. YBARRA: Nothing on mine.

19 MR. EICKMEYER: Anybody else on the phone?
20 Hearing nothing, I guess we can conclude.

21 THE VIDEOGRAPHER: One moment, please. This
22 concludes today's proceedings in the deposition of Paul
23 Dhillon. The number of videotapes used is a total of
24 three. We are now going off the record, and the time is
25 12:06 p.m.

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1 (Whereupon the deposition of JATINDER PAUL
2 DHILLON concluded at 12:06 p.m.)

3 -ooo-

4 Please be advised I have read the foregoing deposition,
5 pages____ through____, inclusive. I hereby state
6 there are:

7 (Check one) ____ no corrections

8 ____ corrections per attached

9 Executed this____day of _____, 2011 at
10 _____, California.

11
12
13 JATINDER PAUL DHILLON

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1 DEPONENT'S CHANGES OR CORRECTIONS
2 Note: If you are adding to your testimony, print the
3 exact words you want to add. If you are deleting
4 from your testimony, print the exact words you
5 want to delete. Specify with "Add" or "Delete"
6 and sign this form.

7 Deposition of: JATINDER PAUL DHILLON
8 Case Title: FRESNO V CHEVRON
9 Date of Deposition: AUGUST 11, 2011

10 I, _____, have the
11 following corrections to make to my deposition:
12 Page Line Change: "Add"/"Delete"

13
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(If you need more space, please use reverse side)

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1 STATE OF CALIFORNIA)
2 (ss.
3 COUNTY OF STANISLAUS)

4 I, ERIC L. JOHNSON, do hereby certify that I am a
5 licensed Certified Shorthand Reporter, duly qualified
6 and certified as such by the State of California;

7 That prior to being examined, the witness named in
8 the foregoing deposition was by me duly sworn to testify
9 to tell the truth, the whole truth, and nothing but the
10 truth;

11 That the said deposition was by me recorded
12 stenographically at the time and place herein mentioned;
13 and the foregoing pages constitute a full, true,
14 complete and correct record of the testimony given by
15 the said witness;

16 That I am a disinterested person, not being in any
17 way interested in the outcome of said action, or
18 connected with, nor related to any of the parties in
19 said action, or to their respective counsel, in any
20 manner whatsoever.

21 DATED: August 29, 2011

22
23
24 Eric L. Johnson, CSR, RPR
25

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

--o0o--

SOUTH TAHOE PUBLIC UTILITY
DISTRICT,

Plaintiff,

vs

ATLANTIC RICHFIELD COMPANY
("ARCO"); ARCO CHEMICAL COMPANY;
SHELL OIL COMPANY; CHEVRON
U.S.A., INC.; EXXON CORPORATION;
B.P. AMERICA, INC.; TOSCO
CORPORATION; ULTRAMAR, INC.;
BEACON OIL CO.; USA GASOLINE
CORPORATION; SHELL OIL PRODUCTS
CO.; TERRIBLE HERBST, INC.;
ROTTEN ROBBIE; J.E. TVETEN
CORP.; TAHOE TOM'S GAS STATION;
THE SOUTHLAND CORP.; PARADISE
CHEVRON; and DOES 1 through 600,
inclusive,

Defendants.

No. 999128
THIS TRANSCRIPT
CONTAINS
CONFIDENTIAL
MATERIALS

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WEDNESDAY, JULY 26, 2000
10:07 A.M.

--o0o--

DEPOSITION OF
JOEL MASCITELLI

--o0o--

CATHLEEN SLOCUM, CSR
License No. 2822

1 product specifications for the company. So I'm sure
2 that he may have had some responsibility at that time.

3 Q At the time you left the company, were these
4 three gentlemen still employed by Ultramar?

10:33:00 am 5 A Yes, they were.

6 Q As far as you know are they still employed by the
7 company?

8 A I believe they, all three of them still are.

9 Q Prior to 1996, and let's take the 1990 through
10 1996 time period, was Ultramar a member of the
11 American Petroleum Institute?

12 A We were a member, and I don't remember the exact
13 year, up until sometime in -- it could have been, you
10:33:30 am 14 know, right after the IPO which was in '92. '93, '94
15 we dropped our membership in the API.

16 Q And was there a particular reason why the
17 membership was dropped?

18 A Cost.

19 Q Was the American Petroleum Institute a source of
20 information regarding other gasoline companies'
21 experiences with gasoline in terms of environmental
10:34:00 am 22 fate?

23 A They were one of the sources, yes.

24 Q And just so I'm clear, Ultramar stopped becoming
25 a member of American Petroleum Institute in

20

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1 approximately 1992 because of cost?

2 A Yeah, '92, '93. Cost and the fact that we felt
3 that we were getting similar type information from
4 other associations.

5 Q All right. And what other associations would
6 those be?

7 A The main one was the NPRA, National Petroleum
10:34:30 am 8 Refiners Association, and then there was also a West
9 Coast association. I believe it was WSPA, Western
10 States Petroleum Association.

11 Q And when was Ultramar a member of the NPRA?

12 A They were, they've been a member, you know, from
13 when I started with the company until when I left.

14 Q Okay. And how long has Ultramar been a member of
10:35:00 am 15 WSPA?

16 A My recollection would be they probably were,
17 became a member after the acquisition of the
18 Wilmington refinery which was in '89. I mean, excuse
19 me, prior to that they could have been an associate
20 member, but I don't remember that.

21 Q And did the NPRA generate materials that it
10:35:30 am 22 shared with members regarding the environmental fate
23 of gasoline?

24 A The NPRA shares materials on environmental
25 matters, gasoline and otherwise, yes.

21

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1 testified earlier that Ultramar was also involved in
2 the retail gasoline business at the time?

3 A Yes.

4 Q As part of the choice of oxygenates, was any
5 consideration given to the underground storage tanks
6 at the retail facilities in terms of the choice of
7 oxygenates?

11:01:30 am 8 A No.

9 Q Was there any, in conjunction with this
10 decision-making process on the choice of oxygenates,
11 was any program instituted regarding tank upgrades or
12 tank inspections of any sort?

13 A Well, at that same period of time the company was
14 upgrading all of their underground storage tanks and
15 their retail stations to meet, you know, a deadline
16 when you were supposed to have these, you know, there
17 was a deadline. I can't remember what it was. It
18 could have been sometime in '98, '99. But we were
19 upgrading, basically on a program to upgrade all of
20 the underground storage tanks to meet the new
21 regulations.

11:02:00 am 22 Q And you think that this program culminated either
23 in 1998 or 1999?

24 A I believe so. And I think -- and, again, it's my
25 recollection that we were, you know, somewhere like 60

40

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1 to 70 percent done when I left the company in '97.
2 And I know that at that point in time we were
3 essentially ahead of the program as far as the number
4 of sites we needed to get done on a yearly basis.

5 Q So when you left the company in 1977, taking the
11:03:00 am 6 converse of what you said, approximately 30 to 40
7 percent of the Ultramar retail stations had not yet
8 had their underground storage systems upgraded?

9 A Yeah, they would be less than 30 percent.

10 Q Less than 30 percent but more than 25 percent?

11 A Hell, again, it's somewhere in that range.

12 Q All right. And do you know what type of storage
11:03:30 am 13 tanks were being installed to meet the California
14 government regs which required upgraded storage tank
15 facilities at retail stations?

16 A I'm pretty sure that in all sites that we were
17 working on we were going to double-walled tanks.

18 Q Do you know if the upgraded -- well, did
11:04:00 am 19 Ultramar own a number of its own stations?

20 A Yes, they did.

21 Q When I say own, that means they own the site
22 where the gas station was located?

23 A I believe in most of the cases they owned the
24 land where the station was located, yes.

25 Q And that would also include obviously the

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1 A Yes.

2 Q From 1996 until you retired from the company, are
3 you aware of any program by Ultramar that required
11:10:00 am 4 independent dealers that purchased gasoline from
5 Ultramar to certify that their tanks weren't leaking
6 to Ultramar prior to a purchase of gas from Ultramar?

7 A I was not aware of that, no.

8 Q Are you aware of any program at Ultramar to
9 determine if the non-branded stations receiving
10 Ultramar gas after 1996 in California -- strike that
11 question.

12 Do you know if Ultramar after 1996 in
13 California had any program to inspect unbranded
14 stations that received Ultramar gasoline in terms of
11:11:00 am 15 whether they had any leaks in their underground
16 storage tank systems?

17 A No, I was not aware of any.

18 Q Now, going back to the decision-making analysis
19 that was undertaken when Ultramar was determining
20 which oxygenate to select, do you know if any members
11:11:30 am 21 of Ultramar ever asked ARCO Chemical to discuss their
22 experiences with MTBE in terms of its environmental
23 fate?

24 A I'm not aware of any, any requests, no.

25 Q Do you recall as you sit here today ever seeing

46

11:16:30 am 1 an oxygenate in 1996?
 2 A No, I'm not.
 3 Q Did you attempt to contact anybody at Shell to
 4 discuss their experience with the use of MTBE in
 5 gasoline --
 6 A No.
 7 Q -- prior to 1996?
 8 A No, I did not.
 9 Q Do you know of anybody at Ultramar that attempted
 10 to contact anybody at Shell regarding their experience
 11 with MTBE in gasoline prior to 1996?
 12 A No.
 13 Q Are you aware of anybody at Ultramar that
 14 attempted to contact anybody at ARCO regarding its
 15 experience with MTBE in conjunction with the
 16 decision-making process to use MTBE in 1996?
 17 A No, I'm not.
 18 Q Did Ultramar engage in any independent research
 19 regarding the environmental fate of MTBE before it
 20 decided to use it as an oxygenate in gasoline?
 21 MS. MILNER: Objection. Asked and answered.
 22 MR. SAWYER: Go ahead, sir.
 23 THE WITNESS: Did we do independent research?
 24 MR. SAWYER: Q Yes, sir, in-house research.
 25 A No, we did not.

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1 Q In conjunction with the Environmental Impact
 11:18:00 am 2 Report with respect to the Wilmington refinery
 3 modifications when you were going to go to MTBE, do
 4 you know if Ultramar did any independent in-house
 5 analysis of the environmental effects of MTBE as part
 6 of the EIR process?
 7 MS. MILNER: Objection. Misstates the
 8 witness' prior testimony. He testified that the
 9 construction and the permitting was done for, not for
 11:18:30 am 10 MTBE but for the CARB RPG requirements.
 11 MR. SAWYER: That's a point.
 12 Q Was any environmental impact analysis done with
 13 respect to the use of or the introduction of MTBE at
 14 the Wilmington refinery?
 15 A Not that I'm aware of unless -- I mean, here
 16 again, -it potentially could have been required under
 17 the Environmental Impact Report but I wasn't aware of
 18 an independent study.
 19 Q So you're not sure whether or not it was included
 11:19:00 am 20 as part of the Environmental Impact Report?
 21 A No, I'm not.
 22 Q When MTBE was first introduced into gasoline and
 23 Ultramar at its Wilmington refinery facility, was
 24 there any analysis undertaken as to whether any
 25 warning should accompany the sale of the gasoline?

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

11:19:30 am 1 A Again, it would fall under the regulations as far
 2 as any kind of product labeling requirements that were
 3 required at that time. And so if there, if there was
 4 a requirement to have the products labeled
 5 appropriately, I mean, you know, with the use of MTBE,
 6 then I'm sure that we would have followed that.
 7 Q Just so I'm clear on your testimony then, if the
 11:20:00 am 8 government required Ultramar to issue a warning, then
 9 they'd issue a warning, but they weren't going to do
 10 any warnings on their own, is that correct?
 11 A Correct.
 12 MS. MILNER: Objection. Argumentative.
 13 MR. SAWYER: Did you get the answer,
 14 "Correct"? All right. Thank you.
 15 Q In conjunction with the decision-making process
 11:20:30 am 16 of selecting the oxygenate to use to meet CARB
 17 requirements, were there any discussions regarding the
 18 effects of MTBE on groundwater?
 19 MS. MILNER: I'm sorry, could I ask the
 20 court reporter to repeat that.
 21 MR. SAWYER: Absolutely.
 22 MS. MILNER: Thanks.
 23 (Thereupon the record was read back.)
 24 THE WITNESS: I don't remember any specific
 11:21:00 am 25 discussions about that, no.

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1 MR. SAWYER: Q Do you have any recollection
 2 whatsoever regarding that particular subject matter
 3 coming up during the decision-making process?
 4 A No, I don't.
 5 Q At some point after the decision was made to use
 11:21:30 am 6 MTBE at the Wilmington refinery and to the point that
 7 you retired from the company, do you recall any
 8 discussions regarding the effects of MTBE on
 9 groundwater?
 10 A No.
 11 Q From the point that Ultramar first used MTBE as
 11:22:00 am 12 an oxygenate at the Wilmington refinery until the
 13 point you retired, do you recall whether or not there
 14 were any meetings at which the subject of MTBE
 15 groundwater contamination was discussed?
 16 A I don't remember any. No, I don't.
 17 Q Now, you indicated that Ultramar relied on what
 11:22:30 am 18 you called its outside experts to, on the issue of
 19 choice of oxygenates and its impact on the
 20 environment. Do you recall ever reviewing any
 21 literature from any of the organizations that Ultramar
 22 belonged to regarding the effects of MTBE on
 23 groundwater?
 24 A I don't remember any, receiving anything on
 11:23:00 am 25 that.

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2
3 I, CATHLEEN S. SLOCUM, a Certified Shorthand
4 Reporter, in and for the State of California, duly
5 appointed and commissioned to administer oaths, do
6 hereby certify:

7 That I am a disinterested person herein; that
8 the witness, JOEL MASCITELLI, named in the foregoing
9 deposition, was by me duly sworn to testify the truth,
10 the whole truth, and nothing but the truth; that the
11 deposition was reported in shorthand by me, Cathleen
12 S. Slocum, a Certified Shorthand Reporter of the State
13 of California, and thereafter transcribed into
14 typewriting.

15 IN WITNESS WHEREOF, I have hereunto set my
16 hand as a Certified Shorthand Reporter on this 31 of
17 July, 2000.

18
19
20
21 Cathleen Slocum
22 Cathleen Slocum
23 Certified Shorthand Reporter
24 License Number 2822

25 --o0o--

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation

Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88

This Document Relates to:

City of Fresno v. Chevron U.S.A Inc., et al.
No. 04 Civ. 04973 (SAS)

Expert Report of Marcel Moreau

Marcel Moreau Associates

Portland, Maine

Marcel Moreau

November 2, 2011

INTRODUCTION

INTRODUCTION

Qualifications

I am a nationally recognized expert in underground petroleum storage systems. Since 1983 I have worked exclusively in the petroleum storage field, chiefly in the areas of regulation, storage system design, leak detection technology, and regulatory compliance assessment.

I have served as consultant to many private and governmental clients, including the U.S. Environmental Protection Agency (EPA), the Chesapeake Division of the U.S. Navy, the Petroleum Equipment Institute, the American Petroleum Institute (API), and the California State Water Resources Control Board.

I have provided technical training concerning underground storage tank systems to state regulatory personnel in Alabama, Alaska, Arizona, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, New Hampshire, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

I have authored a chapter discussing the federal underground tank regulatory program in the *Handbook of Storage Tank Systems*, a textbook sponsored by the Steel Tank Institute. I am a regular columnist for *L.U.S.T.Line*, a U.S. EPA-funded bulletin that covers issues associated with underground storage tank systems.

I have co-authored a paper entitled "MTBE as a Ground Water Contaminant," published in the 1986 *Proceedings of the Petroleum Hydrocarbons and Organic Chemicals in Ground Water – Prevention, Detection and Restoration – A Conference and Exposition* co-sponsored by the API and the National Water Well Association (NWWA).

As a consultant to the Petroleum Equipment Institute (PEI), I have worked with PEI committees to produce eight industry recommended practices, including:

- *Recommended Practices for Installation of Underground Liquid Storage Systems* (1997, 2000, and 2005 editions)

INTRODUCTION

- *Recommended Practices for Installation of Aboveground Storage Systems for Motor Vehicle Fueling* (1999 and 2003 editions)
- *Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites* (2004 edition)
- *Recommended Procedure for Testing Electrical Continuity of Fuel-Dispensing Hanging Hardware* (2002 edition)
- *Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment* (2005 edition)
- *Recommended Practices for Overfill Prevention for Shop-Fabricated Aboveground Tanks* (2007 edition)
- *Recommended Practices for the Inspection and Maintenance of UST Systems* (2008 edition)
- *Recommended Practices for the Design and Maintenance of Fluid-Distribution Systems at Vehicle Maintenance Facilities* (2009 edition)
- *Recommended Practices for the Installation of Marina Fueling Systems* (2009 edition)

I have discussed storage tank issues with editors from the trade publications *National Petroleum News* (NPN) and *Convenience Store News* and reporters from the television news magazine *60 Minutes*.

Since 1991, I have been the president of Marcel Moreau Associates in Portland, Maine, a consulting firm providing information and educational services related to petroleum storage tank systems for government, industry trade organizations, and private sector clients.

A significant facet of my professional career is the analysis of underground storage tank system failure.

I have testified as an expert witness regarding the sources and potential effects of MtBE releases from underground gasoline storage tanks in several prior MtBE litigations, including:

- *City of New York v. Amerada Hess et al.*, United States District Court, Southern District of New York, MDL No. 1358, Master File C.A. No. 1:00-1898 (SAS)
- *South Tahoe Public Utility District v. Atlantic Richfield Co., et al.* San Francisco Superior Court Case No. 999128
- *Communities for a Better Environment v. Unocal Corp., et al.*, San Francisco Superior Court Case No. 997013

INTRODUCTION

- *Dunne, et al. v. Shell Oil Company*, Index #96-13856T, Supreme Court of the State of New York, County of Westchester

Disclosures

A listing of my publications and the cases for which I have provided deposition and trial testimony is contained in my curriculum vitae which is attached to this report as Appendix A.

I am being compensated for my time at the rate of \$275 per hour. No portion of my compensation is contingent upon the outcome of this litigation.

It is my understanding that discovery in this case is ongoing. I reserve the right to supplement this report and modify any opinions presented herein based on any additional documents or information that I may review or that may be produced in conjunction with this case.

Overview

At the request of plaintiffs, I have been asked to review industry documents and draw on my knowledge and experience in underground storage tank systems, which I will refer to as "UST systems" throughout this document, to render opinions concerning the following six topics:

- I. What are the components of UST systems and how do petroleum releases typically occur from these systems?
- II. What is the efficacy of leak detection methods in detecting leaks from underground petroleum storage systems, especially if the petroleum leaking from the storage system contains MtBE?
- III. What information was available to the petroleum marketing industry concerning the integrity of UST systems during the time when gasoline/MtBE mixtures were stored in UST systems?
- IV. What is the MtBE problem, what did the oil industry know during the 1980s and 1990s about the MtBE problem, what steps did they take to address the problem, and what warnings did they provide in response to the problem?

INTRODUCTION

- V. What does the widespread occurrence of MtBE in groundwater tell us about the standard-of-care required to store and handle gasoline that contains MtBE?

SECTION III

ground at U.S. service stations and that as many as 77 percent of them would begin leaking over the next five to ten years.¹⁰⁵ Dr. Rogers had been retained by the API to determine a formula to be used in predicting when UST would begin leaking.

June 14, 1981 – Jury Returns \$200,000,000 Verdict Against Chevron

In June of 1981, a jury found Chevron guilty of negligence, trespass, nuisance, and posing an “ultra-hazard” in connection with a gasoline leak in Northglenn, Colorado that entered sewer lines and caused several explosions. News reports indicated the jury verdict could cost Chevron up to \$200 million dollars, although Chevron later denied that the leak was this costly (see July 1982, *The Tank Leak Mess*, in Section III of this report).

March – July 1981 – NFPA Describes the Leaking UST System Problem

A series of three articles written by Martin Henry, the flammable liquids specialist for the NFPA, appeared in the *NFPA Fire Journal* in 1981. The first article presented an overview of the leaking UST system problem and noted that, “In one eastern state, in a two-and-half year period, 115 homes had to be temporarily vacated; 8 homes were destroyed; 3 explosions occurred; 17 persons were injured; 14 public water supplies, which affected 800,000 users, were threatened; and the water quality of 104 wells was seriously damaged.”¹⁰⁶ These numbers make clear the emerging magnitude of the leaking UST system problem and the potential liability posed by the many tens of thousands of storage systems owned by major oil companies. The article also noted that, “...it is widely acknowledged that most leaks are never reported. Most states require that the individuals responsible for the leak make official notification to the proper authorities. Yet, almost every reported case of leakage results from a third-party complaint involving pollution or fire hazard.”¹⁰⁷ Despite the rising awareness and the increasing numbers of reported incidents, it was clear that the true magnitude of the problem was still unknown.

¹⁰⁵ Ibid.

¹⁰⁶ “Underground Leakage of Hydrocarbons – An Overview of a Potential Fire Problem,” Martin F. Henry, *NFPA Fire Journal*, March 1981.

¹⁰⁷ Ibid.

SECTION III

system that was going to have problems is still going to have problems. Upgrades addressed inadvertent spills and releases, not root causes of tank or line leaks.”¹⁴⁸

Summary

Leaks from UST systems have long been recognized by petroleum marketers and were considered “inevitable.”¹⁴⁹ In 1980, at the time when MtBE began to be blended into gasoline, the petroleum industry was acutely aware of the decrepit nature of the nation’s population of UST systems. Any company that owned substantial numbers of underground petroleum storage systems in the latter part of the twentieth century knew or should have known that these storage systems were common sources of groundwater contamination.

Recognizing this problem, trade press and internal company documents show that major oil companies undertook expensive UST system upgrading programs in the 1980s. It was well known in the industry, however, that many other storage tank owners put off upgrading their storage systems until the late 1990s. Most of these station owners were not aware of the MtBE problem (see Section IV) and the hazards posed by even small gasoline releases from their storage systems. Thus, in the time frame when MtBE was prevalent in the nation’s gasoline supply, the nation’s UST population was poorly suited to contain it.

¹⁴⁸ “Draft Agenda; Roster; Info Items,” internal Shell e-mail from G. Marshall to C. Stanley, March 12, 1999.

¹⁴⁹ “Tank Leaks: Like the Common Cold, Nobody’s Found a Cure,” *NPN*, January 1979.

SUMMARY

SUMMARY

Summary Listing of Opinions Contained in this Report

- The petroleum industry was very well aware that large numbers of UST systems were leaking or at risk of leaking when they introduced MtBE as an gasoline octane enhancer in 1979 and as an oxygenate in the 1990s. Throughout the 1980s and 1990s, a time when the quantity of MtBE produced placed it among the top organic chemicals in the country, UST systems continued to leak huge quantities of gasoline blended with MtBE into the ground. Despite this knowledge, oil refiners chose to make MtBE a major constituent of their gasoline.
- The health of the nation's UST systems improved gradually in the 1980s and 1990s, but a significant percentage of tank owners put off making the required improvements to their storage systems until the eve of the December 1998 regulatory deadline. This procrastination was common knowledge within the petroleum marketing industry, yet the industry issued no warnings to tank owners concerning the increased potential for gasoline blended with MtBE that was being delivered into storage systems that lacked corrosion protection, spill containment, and overfill prevention to cause groundwater contamination.
- MtBE leaks continued to plague the industry, even from "state-of-the-art" storage systems. Because of the very small quantities of MtBE required to cause measurable and persistent contamination, even secondarily contained storage systems were frequently unable to adequately contain MtBE gasoline. In addition, routine spills during operation and maintenance of UST systems contributed to MtBE releases to the environment.
- Commonly used leak detection technologies such as inventory control and automatic tank gauging were woefully inadequate in detecting MtBE releases. Even the most accurate leak detection technologies could only detect leaks of a

SUMMARY

few gallons per day at best, while MtBE required leak detection accuracy on the order of a few gallons per year.

- The solubility, slow biodegradation rate, and low odor and taste thresholds of MtBE distinguished this chemical from the hundreds of other constituents of gasoline. This uniqueness is evident in contamination plumes where MtBE is virtually the only chemical present or in plumes where there is an MtBE-only halo around the main body of the plume. Despite knowledge of these unique properties and the unique hazards they posed to groundwater quality, MtBE producers and distributors took no steps to warn the petroleum distributors, marketers, and users of their products of the special handling required for fuels containing MtBE.
- MtBE releases occurred from UST systems regardless of the sophistication of the owner or operator. This is because the “state-of-the-art” in storage system technology and the “standard-of-care” implemented by petroleum handlers and end-users were not sufficient to adequately contain MtBE. The lax standard-of-care was prevalent from decades of storing and handling gasoline without MtBE. No attempt was made to improve this standard-of-care because the industry contended that MtBE gasoline could be handled just like any other gasoline.
- A number of steps could have been taken that would have greatly lessened the number and magnitude of MtBE release incidents, including acknowledging the increased threat to groundwater posed by MtBE, promoting better handling procedures for gasoline, installing better UST systems, and using leak detection methods specifically aimed at the early detection of MtBE releases. The key step would have been to acknowledge that MtBE posed a threat to groundwater. Instead of providing warnings, however, the industry chose to whitewash the issue.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**In re: Methyl Tertiary Butyl Ether ("MTBE")
Products Liability Litigation**

**Master File No. 1:00-1898
MDL 1358 (SAS)
M21-88**

This Document Relates To:

City of Fresno v. Chevron U.S.A. Inc., et al., No. 04
Civ. 04973 (SAS)

EXPERT REBUTTAL REPORT OF MARCEL MOREAU

Marcel Moreau Associates
73 Bell Street
Portland, ME 04103



Signature

March 5, 2012

Date

contamination is due to inadequate storage system technology, inadequate monitoring for releases, and the lack of pre-installed remediation technology.

Defendants Recognized that Commonly Used Storage System Technology Was Inadequate to Contain MtBE Gasoline

The field evidence conclusively points to widespread inability of underground storage systems to be operated for any substantial length of time without experiencing substantial releases of gasoline. Having owned tens of thousands these storage systems over many decades, most of the defendants were well aware that this was the case.³⁴ Most of the defendants had replaced their leak prone bare-steel storage systems with fiberglass tanks and piping in the 1980s. Many of the defendants upgraded their facilities beyond California's regulatory requirements in the 1990s³⁵ in order to better contain gasoline.

But many of the Fresno facilities continued to operate with bare-steel storage system well past the time when MtBE was prevalent in California gasoline.³⁶ Defendants recognized that these storage systems were not adequate for the storage of gasoline, let alone gasoline with MtBE. Many of the Fresno facilities were owned or operated by people who knew very little about underground storage systems.³⁷ Other than the fact that gasoline is dangerous, these people knew very little about the properties of gasoline.³⁸ They had no way of knowing the dramatically increased security required of their storage systems to protect the environment from MtBE contamination. They needed to know this information before MtBE was introduced into gasoline.

³⁴ Expert Report of Marcel Moreau, *City of Fresno v. Chevron U.S.A., Inc., et al.*, November 2, 2011, Section III.

³⁵ E.g., Amoco, "Spill Prevention at Service Stations," approximately 1995, Bates 1206003119-121; Amoco, "MTBE: Recommendations for Environmental Liability Management, June 3, 1997; Shell, "An Environmental Symposium on MtBE," presentation by Glen Marshall, August 1996; Chevron, "Underground Storage Tank System Environmental Performance, Chevron Products Company, May 2003.

³⁶ E.g., 7-Eleven #19198, 1596 North Palm St.; Beacon #3519, 4591 E. Belmont Ave.; Beacon Arco #3615, 1625 Chestnut Ave.; Exxon, 4594 East Tulare Ave.; Fresno Valley Gas, 2139 S. Elm St.; Gas 4 Less, 3706 E. Gettysburg Ave.; M & S Texaco, 2619 S. East Ave.; Ratcliffe Gas, 2145 N. Blackstone; Tosco #30857, 1610 N. Palm Ave.; U & A Gas, 2929 N. Blackstone Blvd.; Van Ness Auto, 2740 West Van Ness.

³⁷ E.g., depositions of Garabed Bedirian, 4/4/11 p. 30, 32; Gary Beacom, 8/10/11, p. 54; Joe Rebella, 3/15/11, p. 32; Babak Lakestani, 8/9/11, p. 50.

³⁸ E.g., depositions of Bryan Leonard Moe, 8/17/11, p. 68; David Benjamin, 8/9/11, p. 167; Ravi Stephen, 9/5/11, p. 101; Babak Lakestani, 8/9/11, p. 37.

Legal Retention at MSXSOC

From: Marshall Glen R [Newcos]
 Sent: Friday, March 12, 1999 2:47 AM
 To: Stanley CC (Curtis) at MSXWHWTC
 Subject: RE: Draft Agenda; Roster; Info Items

Already discussed details with Mike Barsa twice. '98 upgrade work will have no affect on MTBE issues. Any system that was going to have problems is still going to have problems. Upgrades addressed inadvertent spills and releases, not root causes of tank or line leaks. Also, all R&D work I'm familiar with indicates that MTBE will have no affect on same.

Glen R. Marshall, P.E.

Staff Coordinator
 Technical Services - Engineering
Equiva Services, L.L.C.
 Shell + Texaco + Saudi Aramco

9/80 Schedule "A"
 Office: (281) 874-4857
 Fax: (281) 874-7979
 Beeper: (800) 342-4033
 Alliance ELS: Marshall GR (Glen)
 Internet: GRMarshall@Equiva.com

Address: Equiva Services, L.L.C.
 12700 Northborough Drive
 Suite 300C12
 Houston, TX 77067

Original Message

From: Stanley CC (Curtis) at MSXWHWTC [SMTP:CS193653@MSXWHWTC SHELL.COM]
 Sent: Thursday, March 11, 1999 3:35 AM
 To: Marshall Glen R (Newcos)
 Subject: RE: Draft Agenda; Roster; Info Items

Glen,

This is just an FYI. The new MTBE counsel (outside attorney) is interested in hearing your opinion on tank upgrades in relation to MTBE release prevention. They will contact you in the near future.

Curt

Original Message

From: Marshall Glen R (Newcos)
 Sent: March 10, 1999 9:32 PM
 To: Stanley CC (Curtis) at MSXWHWTC
 Subject: RE: Draft Agenda; Roster; Info Items

Any specific support needs from me or my department? I'm not officially on any of the attached committees to my knowledge, have out-of-state vendor coming in on 3-31, and will only be in office 3-29 thru 4-1. Due to current travel commitments, will not be back in office on regular basis until roughly 4-8.

Glen R. Marshall, P.E.

Staff Coordinator
 Technical Services - Engineering
Equiva Services, L.L.C.
 Shell + Texaco + Saudi Aramco

9/80 Schedule "A"
 Office: (281) 874-4857
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 Alliance ELS: Marshall GR (Glen)
 Internet: GRMarshall@Equiva.com

Address: Equiva Services, L.L.C.
 12700 Northborough Drive
 Suite 300C12
 Houston, TX 77067

Original Message

From: Stanley CC (Curtis) at MSXWHWTC [SMTP:CS193653@MSXWHWTC.SHELL.COM]
 Sent: Wednesday, March 10, 1999 12:48 PM
 To: Allen Register; Ariene Warden; Brad Boschetto; Bruce Krewinghaus; Chen Chiang; Chris Neville; Christine White; Chuck Lieder; Cindy Delaney; Daniel Farrier; Ed Hsu; Edward Dinkfield; Erik Hansen; F Benton; Felicia Federico; George Dealey; George Devault; Gerard Spindler; Glen Marshall; Gwenevieve Broussard; Heana Rhodes; James Michalski; Jerry Ivie; Joe Salandino; Jonathan Miller; Kathleen Gilmore; Ken Dammer; Ken Springer; Marjorie Hong; Michael Gallagher; Otto Meyers; Paul Sun; Pete Parker; Phil Daly; Phil Dorn; Richard Lewis; Rick Wolf; Robert Dedoes; Robert Ettinger
 Subject: FW: Draft Agenda; Roster; Info Items

FYI

Curt

SH 022667

Bar D (DBEA)

From: Dickey, Hugh (JHDI)
Sent: Wednesday, January 20, 1999 10:59 AM
To: Hopkins, Mark (MHOP)
Cc: Harrer, Bob (ROBD); Buscheck, Timothy (TIBU); Barber, Randy (RBBB); Sea, D (DBEA); Jessel, Al (AJJE); Gilson, Donald (DFGI); Hartwig, Jeff (JWHA); Freeberg, Clay (CRFR); Pierce, David (DWPI)
Subject: RE: MTBE Fate in the Subsurface

Mark - Here's the final MTBE-UST white paper. I tried to be consistent with the spirit (if not the exact wording) of the comments I received from folks. Thanks to all. The only thing we need now is the Bill # from Feinstein's bill and it will be final.

Hugh



MTBE-UST White
 Paper (Final)

-----Original Message-----

From: Dickey, Hugh (JHDI)
Sent: Monday, January 18, 1999 8:05 AM
To: Buscheck, Timothy (TIBU); Sea, D (DBEA); Barber, Randy (RBBB); Harrer, Bob (ROBD); Hopkins, Mark (MHOP); Jessel, Al (AJJE); Gilson, Donald (DFGI); Hartwig, Jeff (JWHA)
Subject: RE: MTBE Fate in the Subsurface

Here's the first draft of the white paper we would like to use in DC to help lobby the Feinstein/Bilbray bills to remove the federal oxygenate mandate. This responds to the argument that OFA and other MTBE manufacturers make that it is "just a problem with the tanks". Please review and get me any comments you have by COB tomorrow. Thanks.

<< File: MTBE-UST White Paper.doc >>

-----Original Message-----

From: Buscheck, Timothy (TIBU)
Sent: Tuesday, January 12, 1999 4:02 PM
To: Dickey, Hugh (JHDI)
Subject: MTBE Fate in the Subsurface

Hugh,

I've attached some material that should be suitable for your white paper.

Tim

<< File: MTBEtanks.doc >>

Solving Problems from MTBE Contamination –

It's Not Just Regulating Underground Tanks

Some have suggested that the problems observed with MTBE contamination of groundwater can be resolved by forcing gasoline manufacturers and retailers into more stringent underground storage tank requirements. They argue it's just the tanks – fix them from leaking, and the MTBE problem will go away. There are several reasons why this explanation over-simplifies the situation. While it is important to reduce the likelihood a release from underground tanks, the mandated use of oxygenates has had unintended consequences. The physical and chemical properties of MTBE (and thus its mobility and persistence in the environment differ markedly from other components of gasoline. These differences make MTBE (and other ethers and heavy alcohols) more likely to get into groundwater and problematic to contain and clean up when a release occurs. These differences include:

- MTBE is more volatile than many components in gasoline. This means it is more likely to evaporate into the atmosphere when a release occurs, which in turn can readily move into water vapor (and subsequent rainfall) in the atmosphere.
- MTBE and other oxygenates are orders of magnitude more soluble in water than other gasoline components. Oxygenates make up one of largest single components in gasoline (10-15% by volume). They have a strong affinity for and dissolve easily in water (rainfall, surface waters, groundwater)
- Other gasoline components in comparison, bond more strongly to soil, should a release occur. This greatly reduces the volume of groundwater requiring clean-up, by limiting the area impacted.
- MTBE does not biodegrade as readily as other gasoline components, increasing the volume of groundwater impacted and making it more difficult to clean up.

Researchers at the University of California – Lawrence Livermore Laboratory¹ have concluded:

MTBE has the potential to impact regional groundwater resources and may present a cumulative contamination hazard. To date, impacts of MTBE to public water systems have been limited and were similar in frequency to those of benzene. Based on historical data, future impacts of aromatic hydrocarbons, such as benzene to water supplies is not expected to be common, due to retardation and relative ease of biodegradation. In contrast, MTBE contamination may be a progressive problem due to the chemical's apparent recalcitrance and mobility. With a compound that appears both ubiquitous and recalcitrant, water resource management on the regional scale will become increasingly relevant.

¹ "An Evaluation of MTBE Impacts to California Groundwater Resources"; LLNL, – June 11, 1998

These concerns on the mobility and persistence of MTBE in the environment are reinforced by a recent study by the state of Maine. The state found MTBE groundwater contamination from small spills of gasoline (e.g. a spill in a parking lot, or a car accident) – incidences that stood in contrast to the known historical causes of MTBE contamination e.g. point source discharges from leaking underground storage tanks.³

While MTBE and other oxygenates have been used for many years as gasoline blending components, it was only after the mandated use of oxygenates following the passage of the 1990 Clean Air Act Amendments, that oxygenates became as widely used as they are today. It is because of the differences in physical and chemical properties of MTBE that it is more likely to reach groundwater, as a result of incidental spills, overfills, and gasoline deliveries, even without underground storage tank leaks. Therefore, the detection of MTBE does not necessarily mean a tank is leaking. For example, MTBE has been found in low concentrations in lakes from rainfall runoff and recreational activities.

Congress passed requirements for owners and operators to upgrade their underground storage tanks, provide for leak detection, and provide for financial responsibility, should a release occur. These requirements became fully effective on January 1, 1999. As a company, Chevron began upgrading their tanks around the country in the early 1980's, years in advance of federal and state requirements. Over the years, Chevron has continued to go beyond federal requirements – for example, in the early 1990's Chevron decided to install double-walled tanks, even though they are not required, in all new and reconstructed service stations. In addition, last year Chevron began a nationwide program to further reduce the likelihood of releases of gasoline into the environment. This program includes evaluation and monitoring of the most sensitive sites where groundwater exists, checking lines and connections of pumps and tanks, and changing station operating procedures and housekeeping practices.

Even these steps, which go far beyond federal and state requirements, can't fully eliminate releases, nor change the physical and chemical properties of MTBE and other oxygenates when they do get in the environment. Further, additional control measures could take years to implement, without fully solving the problem. The solution is to allow refiners the flexibility to avoid putting MTBE into gasoline in the first place. California Cleaner Burning Gasoline, the cleanest burning gasoline in the world, can be produced with little or no oxygenates and still meet the state's strict air quality requirements. Congress should pass HR 11 and S () which would allow California refiners this flexibility.

³ "The Presence of MTBE and Other Gasoline Compounds in Maine's Drinking Water"; October 13, 1998

EXHIBIT 7

Deposition of Imtiaz Ahmad / February 16, 2011

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CITY OF FRESNO,

Plaintiff,

vs.

CHEVRON U.S.A. INC., et al.,

Defendants.

No. 04 CIV. 4973
(SAS)MDL 1358

DEPOSITION OF

IMTIAZ AHMAD

FREMONT, CALIFORNIA

WEDNESDAY, FEBRUARY 16, 2011

DEPOBOOK REPORTING SERVICES

Certified Shorthand Reporters

1600 G Street, Suite 101

Modesto, California 95354

800-830-8885

REPORTER: DENISE WHEELER, CSR NO. 8254

Deposition of Imtiaz Ahmad / February 16, 2011

1 Q. There's an indication about four lines down that
 2 says, "Date of business commencement 11, slash, 1, slash,
 3 91." Do you see that?
 4 A. Yes, I do.
 5 Q. And does that match your approximate recollection
 6 as to when Petro Group II started operating that station?
 7 A. Yes.
 8 Q. Now, in about the middle section here below the
 9 heavy bar it looks like UST Annual Fees. It says, "Three
 10 non-upgraded tanks." Do you see that?
 11 A. Yes.
 12 Q. Do you recall were -- were there three underground
 13 storage tanks at the time that Petro Group II took over that
 14 station on Elm?
 15 A. Yes.
 16 Q. Did you have any knowledge whether these tanks were
 17 singled walled or double walled?
 18 A. They were single walled.
 19 Q. Do you have any knowledge as to what those tanks
 20 were made out of?
 21 A. They were made out of steel.
 22 Q. Do you have any knowledge as to when those tanks
 23 were first installed?
 24 A. First installed? They were old tanks. I would not
 25 know exactly, no.

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1 Q. Is it correct the tanks were not changed out at the
 2 time that Petro Group II took over the station?
 3 A. No, sir.
 4 Q. Do you know at the time the Petro Group II took
 5 over was there any kind of leak detection system for those
 6 underground storage tanks?
 7 A. No, other than manual inspection we do on a daily
 8 basis.
 9 Q. Okay. Set that aside. Thanks.
 10 (Exhibit No. 6 was marked for
 11 identification.)
 12 MR. EICKMEYER: Q. Handing you Exhibit 6, this is
 13 Business Plan Registration Form Department of Health, Date
 14 stamped at the bottom right RWQCB hyphen Fresno hyphen
 15 001732. Do you recognize having seen this form before?
 16 A. When you say recognize, the -- the answer would be,
 17 no, I don't recognize. All I know is, yes, we did these
 18 things, and you had to file certain forms. And I can see
 19 just my wife's writing. So the answer -- when you said
 20 recognize, tell me what you're saying?
 21 Q. Well, if you remember having seen this page before.
 22 You're saying you remember seeing similar forms?
 23 A. Yes.
 24 Q. You're not sure if you've seen this exact page
 25 before?

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1 A. That's exactly what I'm saying.
 2 Q. Do you recognize your wife's signature down at the
 3 very bottom?
 4 A. Yes, I do.
 5 Q. Now, in about the middle of the page under
 6 emergency contacts has your name listed?
 7 A. Yes.
 8 Q. And below that it says title of manager?
 9 A. Uh-huh.
 10 Q. Is that yes? I think you said uh-huh.
 11 A. Yes. Yes. I'm sorry.
 12 Q. Were you considered the manager of the station on
 13 Elm?
 14 A. Yes.
 15 Q. Were you present there during the station
 16 operations?
 17 A. Not every day but a good part of -- part of it.
 18 Q. When you or Petro Group took over that station,
 19 were you given any training in what to do in the event of a
 20 gasoline leak or spill?
 21 A. I believe we went through that process.
 22 Q. Who did you go through that process with?
 23 A. I believe Beacon did it or someone from Beacon came
 24 in who did it.
 25 Q. Do you have any recollection of what you were told

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1 to do in the event of a gasoline leak or spill?
 2 A. I believe we had what you guys called an
 3 environmental kit. Its a 55-gallon drum.
 4 THE COURT REPORTER: What, kit?
 5 THE WITNESS: Kit, K-I-T. So it has a sack or two
 6 sacks of chemical that wipes up the gasoline or oil. That
 7 it has some kind of bonds that are supposed to contain the
 8 oil. There was a bunch of stuff in there, some rags and
 9 that kind of stuff in that tub.
 10 MR. EICKMEYER: Q. I've heard different witnesses
 11 describe a product that had the consistency of kitty litter.
 12 Did you have something like that?
 13 A. Yeah, you can say that. You can say that. That's
 14 the term they used, yes.
 15 Q. Do you recall how often you would have to use that
 16 kitty litter type product to clean up a gasoline leak or
 17 spill at the station?
 18 A. Not that very often.
 19 Q. Can you quantify how often that would be, weekly,
 20 daily, monthly?
 21 A. I wouldn't be able to say how often, but I would
 22 say probably about -- I would say probably at least once --
 23 once a month or so you would end up using it.
 24 Q. After that kitty litter product was applied to the
 25 ground was it then swept up or scooped up somehow?

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1 A. Yes.

2 Q. And then where would that used product be placed?

3 A. That product was supposed to go back in that drum
4 basically.

5 Q. So the product would be reused?

6 A. Not reuse. I think the -- the kitty litter would
7 be sitting in our -- in our storage room, and then you have
8 the plastic bags. That's where the stuff is supposed to go
9 back once you sweep up the floor. And then I think every so
10 often somebody came in or we took it someplace else I
11 believe.

12 Q. So after the kitty litter product was swept up, it
13 would be put into a plastic bag?

14 A. It was put in a plastic bag.

15 Q. Were these kept inside the station building or a
16 storage shed?

17 A. No, the outside building. There was always a
18 storage somewhere there. So, like, this particular location
19 you're talking about, there's a main building, and then
20 there's a side building. A little bit of a -- you can call
21 a storage room where we keep the -- the tanks have a
22 measuring sticks in the old days. So this was like a 10, 15
23 feet long stick that you put in the tank to measure how much
24 the gas is there on a daily basis.

25 And then also the chemical kit would be in that

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1 Q. Were you ever told at a particular time that MTBE
2 was being added to the gasoline?

3 A. Yes.

4 Q. Do you recall when you first heard that?

5 A. When we took over the gas station back in '91.

6 Q. Do you recall ever being told while Retro Group
7 operated the station that MTBE was no longer being added to
8 the gasoline?

9 A. I think that came in effect after we sold the gas
10 stations.

11 Q. Did you ever hear from any source why MTBE was
12 being added to the gasoline?

13 A. I think I need to add something at this point. As
14 a CPA I specialized in gasoline service station accounting.
15 So as such I have, let's say, more than 50 gas station owner
16 operator. So on a daily basis I hear everything there is to
17 hear about the industry.

18 Q. Do you recall hearing from any sources as to why
19 MTBE was added to gasoline?

20 A. Why it was added to the -- I think Arco who came up
21 with this product to boost the oxygenation I believe.
22 That's what it was.

23 Q. Do you recall ever hearing that gasoline with MTBE
24 in it needed to be treated differently than gasoline that
25 did not contain MTBE?

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1 A. I would not know at this point, no.

2 Q. Do you recall when gasoline was being delivered to
3 the station, did you ever receive an MSDS or Materials
4 Safety Data Sheet for gasoline?

5 A. The answer would be have no idea at this time. But
6 I can tell you on every single pump we had notice about MTBE
7 so that buyers of the gasoline, the consumer of the
8 gasoline, would know that this product included MTBE.

9 Q. Did you ever hear from any source why those labels
10 needed to be put on the pumps?

11 A. I think it could have many, many reasons. But the
12 biggest reason the customer wanted to know or let the
13 customer know it could affect their converter system in
14 their cars.

15 Q. Were those labels that you mentioned on the pumps
16 the entire time you operated the station?

17 A. I'm sorry, say it again.

18 Q. You described I think it was a label on the pump?

19 A. Yeah, these are called decals.

20 Q. Decal. Were these decals indicating there was MTBE
21 in the gasoline on the pumps during the entire time you
22 operated the station?

23 A. That is correct, yes. I believe MTBE was added on
24 during the cold season like starting October to February,
25 and then it would come off I believe.

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1 actual scheduling reasons for it, but I apologize for it
2 being somewhat awkward.

3 Can you hear me?

4 A. I can hear you pretty good at this point.

5 Q. As I said in the beginning, I represent the Valero
6 defendants in this case, and I just wanted to clarify a few
7 things you discussed with Mr. Bickmeyer if that's okay?

8 A. That's okay with me.

9 Q. I know that you said that after Petro Group II
10 purchased the Elm Street station from Ultramar, that it was
11 Beacon and Ultramar gasoline that was delivered to the
12 station; is that correct?

13 A. That is correct.

14 Q. And do you recall if there was a specific agreement
15 between Petro Group II and Ultramar that allowed for that
16 delivery of gasoline?

17 A. I believe we signed the -- what do you guys call in
18 this business branded versus not branded gasoline, so that
19 particular place was branded as Beacon, so we signed a
20 contract with them.

21 Q. Like a brand distribution marketing agreement,
22 something like that?

23 A. Yes.

24 Q. Okay. And do you recall if there was a specific
25 number of years that that was set for?

1 A. That I don't know. I think it was three-year
2 agreement or five-year agreement.

3 Q. Okay. And do you recall if there was any other
4 specific terms in that agreement, whether there were
5 specific amounts of gasoline specified or whether it set out
6 other requirements for either party?

7 A. I believe we couldn't buy from anybody else other
8 than Ultramar during -- during the product term.

9 Q. Okay. And I believe that you just told my
10 associate -- my colleague that you ceased the brand name
11 agreement in 1995; is that correct?

12 A. That is correct.

13 Q. And at that time you stopped accepting Beacon or
14 Ultramar gasoline at the station; is that correct?

15 A. That's right.

16 Q. And did you have Beacon or Ultramar signs at the
17 station, do you recall?

18 A. After we stopped buying from Beacon?

19 Q. When you were buying from Beacon?

20 A. Yeah, every time -- yeah, so -- so while we were
21 buying from Beacon, what we were called in the market is
22 called branded location -- so as such we were branded
23 Beacon. So every location had a sign called Ultramar Beacon
24 sign. And this particular location had an Arco sign.

25 Q. Okay. And do you recall if you needed new gasoline

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REPORTER'S CERTIFICATION

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4

I, DENISE WHEELER, CSR No. 8254, Certified Shorthand

5

Reporter, certify:

6

That the foregoing proceedings were taken before me at

7

the time and place therein set forth, at which time the

8

witness was put under oath by me;

9

That the testimony of the witness, the questions

10

propounded, and all objections and statements made at the

11

time of the examination were recorded stenographically by me

12

and were thereafter transcribed;

13

That the foregoing is a true and correct transcript of

14

my shorthand notes so taken.

15

I further certify that I am not a relative or employee

16

of any attorney of the parties, nor financially interested

17

in the action. I declare under penalty of perjury under

18

the laws of the California that the foregoing is true and

19

correct.

20

Dated this 28th day of February, 2011.

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DENISE WHEELER, C.S.R. No. 8254

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Methyl Tertiary Butyl Ether
("MTBE") Products Liability Litigation

This document relates to:

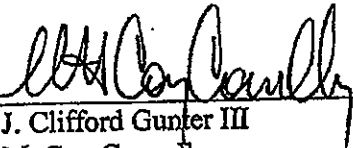
*City of Fresno v. Chevron U.S.A., Inc., et
al.*, No. 04 Civ. 4973

Master File No. 1:00-1898
MDL No. 1358 (SAS)
M21-88

VALERO DEFENDANTS'
OBJECTIONS AND RESPONSES
TO PLAINTIFF CITY OF
FRESNO'S FIRST SET OF
INTERROGATORIES TO
DEFENDANTS

Pursuant to Federal Rule of Civil Procedure 33 and Local Rule 26.3, Ultramar Inc., Valero Marketing and Supply Company, and Valero Refining Company-California (collectively "Valero Defendants") answer and object to Plaintiff City of Fresno's ("Plaintiff" or "City of Fresno") First Set of Interrogatories served on September 2, 2008 as follows.

Dated: November 5, 2008.


J. Clifford Gunter III
M. Coy Connelly
Amy E. Parker
BRACEWELL & GIULIANI LLP
711 Louisiana St., Suite 2300
Houston, Texas 77002-2770
Telephone: (713) 221-1335
Telecopier: (713) 221-1212

Attorneys for Defendants
ULTRAMAR INC., VALERO MARKETING AND
SUPPLY COMPANY, AND VALERO REFINING
COMPANY-CALIFORNIA

2. Beacon #78: Belmont at 12th Street, Fresno CA (1935—Closure Date Unknown)
3. Beacon #80: Tulare & Chestnut, Fresno CA (Dates of Leasehold Unknown)
4. Beacon #496: 4809 E. Kings Canyon, Fresno CA (Dates of Leasehold Unknown)
5. Beacon #595: 3768 S. Highway 99, Fresno CA (09/01/83—03/27/96)
6. Beacon #620: 4594 E. Tulare, Fresno CA (01/22/85—08/28/95)
7. Beacon #658: 1334 N. First St., Fresno CA (Lease terminated 11/01/96)
8. Beacon #257: 9th & McKenzie, Fresno CA (Site leased 10/46. Lease Termination Date Unknown)
9. Beacon #432: 2950 E. Ventura, Fresno CA (Dates of Leasehold Unknown)
10. Beacon #433: 1372 N. First St., Fresno CA (Dates of Leasehold Unknown)
11. Beacon #437: 4652 Belmont, Fresno CA (Dates of Leasehold Unknown)
12. Beacon #438: 4005 E. Jensen, Fresno CA (Dates of Leasehold Unknown)
13. Beacon #460: 603 G. Street, Fresno CA (04/28/75—04/30/90)
14. Beacon #472: 2295 S. Elm Ave., Fresno CA (Dates of Leasehold Unknown)
15. Beacon #516: 2430 E. Olive St., Fresno CA (07/15/85—10/31/91)
16. Beacon #538: 2139 S. Elm, Fresno CA (Lease terminated 11/01/91)
17. Beacon #579: 5190 E. Olive, Fresno CA (Lease terminated 11/01/91)
18. Beacon #619: 3076 E. Gettysburg, Fresno CA (01/22/85—08/03/89)
19. Beacon #9-1: 6900 N. Motel Dr., Fresno CA (Dates of Leasehold Unknown)

INTERROGATORY NO. 4:

IDENTIFY the address of all gasoline stations with which YOU have or have had a retail supply contract within the RELEVANT GEOGRAPHIC AREA since 1979.

- a. State the retail supply contract dates for each station YOU identified.

RESPONSE:

Valero Defendants object to this Interrogatory on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory is specifically overbroad both with respect to time, as explained in General Objections Nos. 6 and 7, and to the extent it calls for the identification of all gasoline stations owned by Valero Defendants in the RGA without regard to whether any of those stations is in the vicinity of any drinking water production well or whether any of those stations has ever been identified as the source of a release of gasoline containing MTBE. Valero Defendants further object to the extent this Interrogatory seeks information outside of Valero Defendants' possession, custody and control. Valero Defendants are not in possession of information pertaining to the operation, maintenance or environmental remediation which may be associated with any of the following stations. Notwithstanding the foregoing or the General Objections set forth above, Valero Defendants respond as follows:

1. #2339: 1919 W. Clinton Ave., Fresno, CA 93705 (06/13/03—present)
2. #2365: 603 G. Street, Fresno, CA 93722 (05/01/93—present)
3. #2516: 2837 N. Parkway Drive, Fresno, CA 93722 (07/18/03—present)

4. #3165: 3076 E. Gettysburg Ave., Fresno, CA 93726 (Branded Beacon prior to 2003. Date of initial branding is unknown. Re-branded Valero 10/17/03—present)
5. #4984: 4591 E. Belmont Ave., Fresno, CA 93702 (10/20/99—present)
6. #21854: 1460 "P" Street, Fresno CA 93721 (1/22/85—10/22/04, 01/27/05—present)
7. #24087: 1785 W. Shaw Ave., Fresno, CA 93711 (12/10/01—09/26/03, 11/27/07—present)
8. #21788: 2414 N. Marks Ave., Fresno CA 93705 (03/01/91—05/16/05, 11/27/07—present)
9. #23972: 388 E. Shaw, Fresno, CA 93710 (Dates of operation unknown, station closed prior to 2002).
10. #21753: 394 E. Olive Ave., Fresno, CA 93728 (09/21/95—04/12/00)
11. #24049: 1680 W. Olive Ave., Fresno, CA 93728. (Date of initial branding unknown. De-branded 07/17/01).
12. #23990: 525 S. Clovis Ave., Fresno, CA 93727. (10/20/99—01/09/02, 11/09/04—present)
13. #21894: 5687 E. Kings Canyon Rd, Fresno, CA 93722, (04/19/95—11/03/02, 01/27/05—present)

INTERROGATORY NO. 5:

IDENTIFY all jobbers, franchisees and/or distributors to whom YOU supplied MTBE gasoline within the RELEVANT GEOGRAPHIC AREA since 1979.

- a. State the dates that YOU supplied MTBE gasoline to each jobber, franchisee, and/or distributor that YOU identified.

RESPONSE:

Valero Defendants object to this Interrogatory on the grounds that it is overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Valero Defendants further object to this Interrogatory on the grounds that the term "franchisees" is vague, ambiguous, and undefined. Further, Valero Defendants object to this Interrogatory to the extent it seeks information regarding sales of gasoline containing MTBE made within the RGA. Valero Defendants do not keep such information in the regular course of business. Valero Defendants' sales records are kept by county. This response will therefore provide information regarding sales made to entities in Fresno County.

Valero Defendants further object on the grounds that this Interrogatory seeks information outside of Valero Defendants' possession, custody and control. For example, apart from deliveries made to Valero Defendants' aforementioned retail and branded stations, Valero Defendants are not in possession of information regarding the ultimate delivery point of any gasoline sold to third parties in Fresno County. Notwithstanding the foregoing, Valero Defendants respond as follows:

Valero Defendants refer Plaintiff to Exhibit A attached to these responses which provides information responsive to Interrogatory No. 5 and Subpart (a) for Fresno County.

VALERO CORPORATE REPRESENTATIVE DEPOSITION
EARLY KNOWLEDGE AND TASTE & ODOR

Norman Renfro
Vice President of Health, Safety and Environmental
Valero Services, Inc.

Employment History

May 7, 1984	Environmental Engineer
1988	Chief Environmental Engineer
1992	Environmental Manager
1995	Director of Safety and Environmental
1997	Vice President of Environmental and Safety Affairs
2002	Vice President of Health, Safety and Environmental

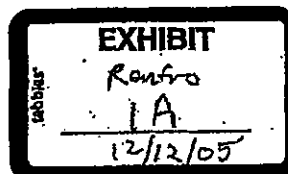
For purposes of this deposition, "Valero" includes the following entities:

Valero Energy Corporation
Valero Marketing and Supply Company
Valero Refining Company
Valero Refining and Marketing Company
Valero Refining Company Louisiana
Valero Refining—Texas, L.P.
Valero Refining Company—New Jersey
Valero Refining Company—California

Norman Renfro testimony applicable to heritage Valero and Basis refineries (1997), Paulsboro (1998), and Benicia (May 2000).

1. Whether any DOCUMENTS described in the Request to Produce Documents, which is a part of this notice, were destroyed. If so, when were said documents destroyed and by whom?

Valero is not aware of any instance in which responsive documents were destroyed. Given the expansive time frame for which the request seeks documents, it is possible that potentially responsive documents were destroyed long before this litigation was initiated.
2. Authentication of all DOCUMENTS produced at the deposition.
3. What efforts were made to locate the DOCUMENTS described in the request to produce documents that accompanies this deposition notice, who performed the search, and when and what was found.



Valero's archive documents were searched and reviewed for purposes of production in previous MTBE litigation matters (MDL I) as well as this litigation (MDL 1358), and for purposes of this subpoena. The files of individual employees thought likely to have relevant information have been collected and reviewed for responsiveness, as have potentially responsive files located at relevant refineries. Documents that were located and determined to be responsive to this subpoena have been produced to Plaintiffs.

The following people were interviewed for preparation for this deposition:

Joe Almarez
Curt Benefield
John Braeutigam
Bobby Broadway
John Cotterel
Gene Edwards
Peter Fasullo
Tim George
Bill Glasscock
Jim Greenwood
Chip Gross
TD Higginbotham
Cal Hodge
Jon Kiggans
George Kain
Baines Manning
Gino Panganucci
Sam Pinizzotto
Roger Rinas
Rick Roat
Les Rucker
Wayne Smithers
Reid Trekell
Geoff Willig
Marty Zanotti

EARLY KNOWLEDGE ISSUES

3. The Defendant's early knowledge and understanding of MTBE and/or TBA's characteristics and impact on the environment.

(a) When Valero First Became Aware That MTBE Had Caused Water Contamination.

A few Valero employees became aware in approximately 1987 of allegations that MTBE had been detected in groundwater in Maine. The information received was

limited and indicated that the release was a unique situation and not likely to recur. Some Valero employees became aware that MTBE had been detected in groundwater in Denver in early-mid 1995. In general, Valero employees became aware of MTBE detections in the City of Santa Monica drinking water wells in connection with news accounts in 1995 or 1996.

(b) First Several Instances in Which Valero Dealt With MTBE Contamination At Refineries

In September 1998, Valero acquired the Paulsboro refinery from Mobil. Since approximately 1979, the refinery has been operating a system designed to contain hydrocarbon contamination underneath the refinery. MTBE was detected in some wells at the refinery in 1997, prior to Valero's acquisition. The operation of the system, however, has not been modified as result of the MTBE detection in 1997.

In May 2000, Valero acquired the Benicia refinery from ExxonMobil. Prior to Valero's acquisition, MTBE had been detected at the refinery and terminal. ExxonMobil retains liability for this contamination. Since mid-2000, however, Valero has operated and maintained the equipment, including quarterly sampling.

In 2001, Valero detected MTBE in groundwater wells at the Corpus Christi refinery. The Remedial Action Plan (pump and treat 7 wells) does not call for any specific/different treatment in light of the existence of MTBE. The refinery continues to monitor the wells semi-annually for MTBE and BTEX.

In 2002, MTBE was detected in groundwater at the Houston refinery. The existing system has not been modified as a result of the MTBE detection.

(c) First Instances in Which Valero Dealt With MTBE Contamination at Retail Stations

In 2000, in connection with Valero's purchase of retail stations in California from ExxonMobil, Valero commissioned environmental assessments of 16 retail stations. MTBE contamination was discovered at 12 of these stations. ExxonMobil retained the responsibility for remediating contamination at the sites. Therefore, Valero did not "deal with" MTBE contamination at these sites.

In 2002, in connection with its merger with Ultramar Diamond Shamrock Corporation, Valero entities acquired 1421 retail stations. Valero acquired approximately 840 sites at which there were on-going remediation activities, some of which included remediation of MTBE. A detailed review of all of the remediation site files has not been performed for this deposition.

(d) First Several Instances in Which Valero Was Provided Information From Others in the Industry About Their Early Experiences With MTBE.

Valero has not located any specific record indicating that it received information from another in the industry about their early experience with MTBE. Valero

acquired information about Mobil's experience with MTBE at the Paulsboro refinery in 1998, and about ExxonMobil's experience with MTBE at the Benicia refinery in 2000. Valero became aware of Ultramar Diamond Shamrock's experiences with remediation of MTBE after its merger with Ultramar Diamond Shamrock on December 31, 2001.

- (e) When Valero First Became Aware of MTBE's Low Taste and Odor Threshold.

Valero does not contend that MTBE has a "low" taste and odor threshold. Valero understands that the concentrations in water at which MTBE can be detected by taste or odor varies widely. In 1995, Valero learned from an OFA Fact Sheet that MTBE's average odor detection threshold in water has been measured in the range of 45-95 ppb and its average taste threshold at 134 ppb.

- (f) When Valero First Became Aware of the Fact that MTBE Flows Further and Faster than BTEX, and is More Likely to Cause Contamination Than a Release of Conventional Gasoline.

Valero became aware of allegations that MTBE flows further and faster than BTEX in 1995. Valero has not concluded that MTBE is more likely to cause contamination than a release of conventional gasoline.

- (g) When Valero First Became Aware of the Fact That MTBE is More Soluble in Water Than the BTEX Constituents.

As a chemical principle, Valero is aware that MTBE is more soluble in water than the BTEX constituents. Valero is also aware that MTBE is less soluble in water than some other constituents of gasoline.

- (h) When Valero First Became Aware of MTBE's Resistance to Biodegradation, and the Fact That MTBE is More Difficult and Costly to Remediate.

Valero became aware of allegations that MTBE was resistant to biodegradation in 1995. Valero agrees that in some specific circumstances, MTBE may be more costly to remove from groundwater than BTEX constituents. Based on Valero's investigation, it appears that Valero first became aware of this in 1995.

TASTE AND ODOR DEPOSITION ISSUES

4. STUDIES done by you, done at your direction, or that you obtained or reviewed that are designed to determine the taste and odor threshold of MTBE and/or TBA in water.

Valero has not performed any such studies. With regard to studies conducted by others, Valero has obtained the following documents that may relate to this issue.

- (a) U.S. Environmental Protection Agency, November 1993, Assessment of Potential Health Risks of Gasoline Oxygenated with Methyl Tertiary Butyl Ether (MTBE): Washington, D.C., Office of Research and Development;
- (b) Oxygenated Fuels Association, 1995, MTBE in Ground Water--Fact Sheet for Local Health and Water Authorities: Oxygenated Fuels Association;
- (c) U.S. Environmental Protection Agency, 1997, EPA Drinking Water Advisory: Consumer Acceptability Advice and Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE) and related Fact Sheet;

5. When, and under what circumstances, according to YOUR records, YOU first learned about MTBE's taste and odor threshold in water, and how that knowledge evolved over time.

Valero first learned of the controversy regarding MTBE's taste and odor threshold in water in 1995. Valero has not formed an opinion as to MTBE's particular taste and odor threshold in water. In December 1997, the EPA set a Drinking Water Advisory for MTBE at 20 to 40 ppb.

6. When, according to YOUR records, YOU first received a copy of the January 17, 2003, Product Safety Bulletin for Methyl Tertiary Butyl Ether published by Lyondell Chemical Company.

Valero has no record of ever receiving a copy of the January 17, 2003, Product Safety Bulletin for Methyl Tertiary Butyl Ether published by Lyondell Chemical Company.

7. When, according to YOUR records, YOU first received a copy of the 18 March 1993 Campden Food and Drink Research Association STUDY titled Flavor [sic] and Odour [sic] Thresholds of Methyl Tertiary Butyl Ether (MTBE) in Water.

Valero has no record of ever receiving this document. Valero understands that it was produced to Ultramar Inc. in the South Lake Tahoe Litigation.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Master File C.A. No. 1:00-1898

**MDL 1358 (SAS)
No. M21-88**

**In re Methyl Tertiary-Butyl Ether
("MTBE") Products Liability Litigation**

**DEFENDANT ULTRAMAR, INC.'S
DISCLOSURE PURSUANT TO JUNE
9, 2005 DIRECTIVE AS AMENDED BY
THE COURT ON AUGUST 12, 2005 .**

This document relates to:

All cases

Defendant Ultramar, Inc. ("Ultramar"), by and through its attorneys, and pursuant to the Court's directive of June 9, 2005 as amended by the Court on August 12, 2005, hereby provides its declaration to the Court's Amended Successor Liability Questionnaire as follows:

1. For each year beginning with January 1, 1979 to date, identify whether Ultramar engaged in designing, manufacturing, refining, distributing or marketing MTBE, TBA, and/or gasoline containing MTBE or TBA ("MTBE Activities").

Response:

Ultramar manufactured gasoline containing MTBE for distribution in California at its Wilmington, California refinery from 1995 through 2003. Ultramar refined and/or manufactured MTBE and/or gasoline containing MTBE at a refinery in Avon, California from approximately September 1, 2000 through May 17, 2002.

Ultramar engaged in the wholesale/bulk marketing and/or selling of gasoline containing MTBE in California from 1994 through July 1, 2002.

From approximately 1995 through 2003, Ultramar owned and/or operated retail gasoline stations in California from which gasoline containing MTBE may have been sold.

- 2A. If Ultramar ceased its MTBE Activities at any time, identify which, if any, of Ultramar's operating entities and/or directly- or indirectly-held subsidiaries continued the MTBE Activities, and the start and end date of such Activities.

Response:

Ultramar ceased the above-described refining/manufacturing activities at the Avon refinery on May 17, 2002, when this refinery was sold to Tesoro Petroleum, Inc. Tesoro Petroleum, Inc. is not an operating entity or subsidiary of Ultramar. Ultramar ceased the above-described refining/manufacturing activities at the Wilmington refinery in

November 2003. The activities were not continued by any operating entity or subsidiary of Ultramar.

Ultramar ceased the above-described wholesale/bulk marketing and/or selling activity on or about July 1, 2002, when this activity was undertaken by Valero Marketing and Supply Company ("VMSC"), an indirectly-held subsidiary of Ultramar.

At various times, Ultramar has ceased the ownership and/or operation of certain retail gasoline stations in California from which Ultramar may have sold gasoline containing MTBE.

- 2B. If any of plaintiffs' causes of action against Ultramar are proven at trial and Ultramar would claim that at some point in time liability for those causes of action shifted, identify whether there are any documents that explicitly refer to a shift in liability for past or future MTBE Activities. If the entity named does not dispute that it would be liable in place of Ultramar should any liability be found, then no documentation need be produced so long as both Ultramar and the named entity stipulate in writing that there is no dispute. If the entity named disputes that it would be liable, then Ultramar must produce documentation as to its claim that liability passed to that entity.

Response:

Ultramar is unable to determine with precision what causes of action or damages are alleged by plaintiffs against Ultramar. Ultramar contends as follows:

The refining and/or manufacturing activities at the Avon, California refinery described above were ceased by Ultramar on May 17, 2002, when this refinery was sold to Tesoro Petroleum, Inc. Tesoro Petroleum, Inc. assumed the liability, if any, associated with Ultramar's MTBE Activities at the Avon refinery pursuant to the Sale and Purchase Agreement of Golden Eagle Refining and Marketing Assets between Ultramar and Tesoro Petroleum, Inc. dated February 4, 2002. Ultramar has no authority from Tesoro Petroleum, Inc. to stipulate to the liability of Tesoro Petroleum, Inc.

Ultramar ceased the wholesale/bulk sale and/or marketing activity described above on July 1, 2002, when this activity was undertaken by VMSC. Ultramar refers Plaintiffs to Defendant Valero Marketing and Supply Company's Disclosure Pursuant to June 9, 2005 Directive as Amended by the Court on August 12, 2005. Ultramar objects to any requirement that it stipulate to the liability of VMSC.

In the unlikely event that any of the claims asserted by Plaintiffs against Ultramar are based on particular releases of gasoline from stations that may have been owned or operated by Ultramar, it is possible that Ultramar will contend that such liability was assumed by a subsequent purchaser or lessor. Until such stations are identified, it is impossible to determine whether any shifting of liability occurred.

- 3A. If Ultramar ceased its MTBE Activities at any time, identify whether a successor-in-interest (e.g. purchaser or newly formed entity) continued the MTBE Activities, and the start and end date of such Activities.

Response:


See Response to Inquiry 2A.

- 3B. If any of plaintiffs' causes of action against Ultramar are proven at trial and Ultramar would claim that at some point in time liability for those causes of action shifted, identify whether there are any documents that explicitly refer to a shift in liability for past or future MTBE Activities. If the entity named does not dispute that it would be liable in place of Ultramar should any liability be found, then no documentation need be produced so long as both Ultramar and the named entity stipulate in writing that there is no dispute. If the entity named disputes that it would be liable, then Ultramar must produce documentation as to its claim that liability passed to that entity.

Response:

See Response to Inquiry 2B.

Dated: October 17, 2005


J. Clifford Gunter III
Tracie J. Renfro
M. Coy Connelly

BRACEWELL & GIULIANI LLP
711 Louisiana St., Suite 2300
Houston, Texas 77002-2770
Telephone: (713) 221-1404
Telecopier: (713) 221-2123

ATTORNEYS FOR DEFENDANT
ULTRAMAR, INC.

EXHIBIT 8

DECLARATION OF ALEXANDER BLAGOJEVIC

RECEIVED
MAY 11 2000

I, ALEXANDER BLAGOJEVIC, declare:

1. I am employed by Lyondell Chemical Company as marketing manager for the Oxyfuels Business Group. My duties specifically include the marketing and sales of MTBE to refining customers in the Americas. Having previously been employed by Arco Chemical Company, I have held my current position since November 1992. I believe I am the person most knowledgeable presently in the employ of Lyondell Chemical Company with regard to the history of sales of MTBE by Arco Chemical Company to customers on the U.S. West Coast.

2. This Declaration is based upon both my personal knowledge and upon a review of certain sales records.

3. Given the nature of our sales and transportation arrangements with various customers, the ultimate location and use of a parcel of MTBE was not always known to us. Largely because our company's MTBE manufacturing units are located in Channelview, Texas, most of our sales contracts for MTBE have included the shipping term "FOB HOUSTON". We did enter into contracts with some customers by which we agreed to arrange for shipment to terminals in California. In many instances, however, the customer arranged shipment for itself and we delivered into the customer's rail cars, tankships, barges, storage tanks or pipelines at Houston. Although in those circumstances we had no way to be certain whether or not the

product was eventually delivered to the West Coast, our Customer Service employees made attempts to obtain and record that information.

4. In answer to Questions 13 and 14 of the "Notice of Taking Deposition of Arco Chemical", dated March 10, 2000, the first sales and deliveries of MTBE in and to California were made on a spot basis to Oxbow Resources (April 1986), Union Chemical (April 1986), Chevron Research (July 1986) and Kern Oil (October 1986).

5. Question 20 attached to the Notice asked whether or not Arco Chemical Company had sold MTBE, directly or indirectly, to certain companies. The answer to that question is "yes" as to the following companies (or their affiliates): Shell Oil Company; Shell Oil Products Company; Equilon Enterprises, LLC; Exxon Corporation; Tosco Corporation (both directly and as the assignee of certain sales contracts originally negotiated with Unocal Corporation); Chevron U.S.A. Inc.; Atlantic Richfield Co.; Texaco Inc.; BP America Inc.; BP Exploration & Oil Inc.; Ultramar, Inc.; Ultramar Diamond Shamrock Corporation; Unocal Corporation and Wickland Oil Company. I have no recollection and have found no record indicating that Arco Chemical Company ever made sales of MTBE to "Pacific Refining". However, the sales records do show a sale in 1992 of less than 500 gallons to a company in Los Angeles referred to as "PRC".

6. I attach a spreadsheet derived from our sales records showing MTBE sales by Arco Chemical Company to certain customers at destinations within

California between 1986 and 1999, inclusive. See Exhibit "A". The destinations identified on our sales records are in most cases either the port or place of delivery by Arco Chemical or the port or place to which the customer had indicated an intention to ship the product. As shown by the spreadsheet, the answer to Question 15 of the Notice is "yes".

7. The answers to Questions 16 and 17 of the Notice are "yes", as indicated above.

8. The types of documents which were generally created by Arco Chemical Company pertaining to the sale, transport, delivery, supply and/or exchange of MTBE to or with any of the defendants in the South Tahoe Public Utility District ("STPUD") case and any Northern California refineries were:

Invoices to customers;

Product Purchase Agreements;

MTBE Sales Contracts;

Exchange Agreements;

Telexes or Letters confirming spot orders;

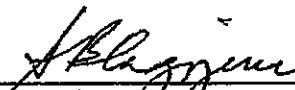
Shipping Contracts with customers;

Shipping bills of lading;

Charter Parties or other contracts with transport providers; and

Invoices from transport providers.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is made this 4th day of May, 2000 at Houston, Texas.



Alexander Blagojevic

EXHIBIT "A"

SALES OF MTBE BY ARCO CHEMICAL COMPANY TO
SPECIFIED CALIFORNIA CUSTOMERS BY DESTINATIONS, 1986-1992

(Volume in Gallons rounded to nearest thousand)¹

CUSTOMER	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
ARCO PRODUCTS CO.														
EL SEGUNDO									6604					
MARTINEZ								2098						
ANAHEIM						0								
CARSON								2068						
CROCKETT							3576	12252						
LONG BEACH						34137	35631	111551	79469	9441	11150	47928	59934	52126
LOS ANGELES						1259	6347	18685	1051	2100		47		
SAN PEDRO						2077	11456	10868						
ATLANTIC RICHFIELD														
LOS ANGELES			2985	15207	2966									
LONG BEACH					14478									

¹Blank box indicates no sales in given year;
"0" indicates sales of at least 1 gallon but less than 500 gallons.

[illegible]

[illegible]

[illegible]

1 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 IN AND FOR THE COUNTY OF SAN FRANCISCO

3 --oOo--

4 SOUTH TAHOE PUBLIC UTILITY)
DISTRICT,)

5 Plaintiff,)

6 vs)

No. 999128
VOLUME I

7 ATLANTIC RICHFIELD COMPANY)
8 ("ARCO"); ARCO CHEMICAL COMPANY;)
SHELL OIL COMPANY; CHEVRON)
9 U.S.A., INC.; EXXON CORPORATION;)
B.P. AMERICA, INC.; TOSCO)
10 CORPORATION; ULTRAMAR, INC.;)
BEACON OIL CO.; USA GASOLINE)
11 CORPORATION; SHELL OIL PRODUCTS)
CO.; TERRIBLE HERBST, INC.;)
12 ROTTEN ROBBIE; J.E. TVETEN)
CORP.; TAHOE TOM'S GAS STATION;)
13 THE SOUTHLAND CORP.; PARADISE)
CHEVRON; and DOES 1 through 600,)
14 inclusive,)

15 Defendants.)
16

17 --oOo--

18 THURSDAY, MAY 6, 1999
10:03 A.M.

19 --oOo--

20 DEPOSITION OF
CURTIS STANLEY

21 --oOo--

22
23
24 CATHLEEN SLOCUM, CSR
License No. 2822
25

EXAMINATION

By DUANE C. MILLER, Esq., counsel on behalf of the plaintiff:

Q Can we have your name and business address, please?

A Sure. My name is Curtis Stanley. My business address is the Equilon Westhollow Technology Center in Houston, Texas. Is that enough?

Q That's sufficient.

THE VIDEOGRAPHER: Excuse me. We need to swear in the witness.

MR. MILLER: Correct.

(Witness sworn.)

MS. DOYLE: So now really tell him your true address.

THE WITNESS: The same.

MR. MILLER: Q Mr. Stanley, I'd like you to briefly relate your educational background starting with college for us, please.

A I have a bachelor of science in geology from North Carolina State University with a specialization in engineering. That is my formal education and then other education that I've received was on-the-job training while at Shell and now Equilon.

Q And basically you were employed by the Shell Oil Company since you graduated from North Carolina State

5

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University?

A That's correct.

Q And you are currently responsible for hydrogeological evaluation of Shell's facilities nationwide and on the West Coast immediately prior to Equilon becoming involved; is that correct?

A In my career I've had responsibility for evaluating facilities. Currently my primary responsibility is in regard to development and implementation of risk-based corrective action.

Q When you were employed by Shell you had responsibility to evaluate retail gasoline stations; is that correct?

A Yes.

Q And you had that responsibility for the West Coast for a period of time for manufacturing facilities; is that correct?

A That's correct.

Q And you also had that responsibility nationwide for Shell for gasoline stations at one time; is that correct?

A That's correct.

Q And what period of time are we talking about when you had that responsibility?

A For retail?

Q Yes.

A As I recall probably starting in 1980 extending into

6

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

the mid-eighties.

Q And when you had those responsibilities, were you responsible among other things for investigating leaks of gasoline?

A Yes.

Q And in that respect did you go to Rockaway, New Jersey in approximately 1980?

A Yes.

Q What was the problem in Rockaway, New Jersey?

A MTBE and diisopropyl ether had been found in the municipal water supply for Rockaway, New Jersey.

Q And why as a Shell Oil Company employee were you interested in that?

A There was an indication that that, the concentrations of those oxygenates, those oxygenates in the water supply, were potentially from one of our service stations located upgradient of the site.

Q Didn't you confirm that Shell was the source of that problem?

A We confirmed that we were part of that problem.

Q In 1980?

A 1980, 1981.

Q Okay. And during that investigation were you in charge of that investigation on behalf of Shell?

A Yes.

7


PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 CERTIFICATE OF CERTIFIED SHORTHAND REPORTER

2
3 I, CATHLEEN S. SLOCUM, a Certified Shorthand
4 Reporter, in and for the State of California, duly appointed
5 and commissioned to administer oaths, do hereby certify:

6 That I am a disinterested person herein; that the
7 witness, CURTIS STANLEY, named in the foregoing deposition,
8 was by me duly sworn to testify the truth, the whole truth,
9 and nothing but the truth; that the deposition was reported
10 in shorthand by me, Cathleen S. Slocum, a Certified
11 Shorthand Reporter of the State of California, and
12 thereafter transcribed into typewriting.

13 IN WITNESS WHEREOF, I have hereunto set my hand as
14 Certified Shorthand Reporter on this 15 of May, 1999.
15
16
17

18 
19 Cathleen Slocum
20 Certified Shorthand Reporter
21 License Number 2822

22 --oOo--
23
24
25

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EXHIBIT 9

Atlantic Richfield Company

Internal Correspondence MAT-9



Date: March 31, 1981

Subject: Pre Study Conference

From/Location: R. N. Roth, AP-479

To/Location: File, MTBE

On March 27, 1981, I attended a conference of the MTBE study group. The purposes of this meeting were to review the status of the pre-study work for Phase I of the MTBE toxicity studies; review the studies with the third party auditor Tracor-Jitco and to review any protocol changes made to the planned teratology and reproduction studies.

Highlights of the discussion are given below:

General

1. ARCO has sent technical material to the laboratory for use in the inhalation studies. Analytical information on the material is available and will be sent out by API.
2. Although not present, Ben Thomas of Shell sent a message that Shell has been involved in the contamination of a township's drinking water with DIPE (disopropyl ether) and 100 ppb MTBE. According to Ben, approximately 20% of all underground gasoline storage tanks leak, leading to the possibility of ground water contamination. This ground water contamination may have to be considered when long term testing is considered. It might also make the NTRP rat study of TBA in the drinking water more applicable. To date, Shell and ARCO are the only ones with MTBE in gasoline.

Reproduction - Teratology Studies

A question arose over what supplier to obtain rats from. Bio/dynamics has a history of SDA virus. Charles River's Kingston facility, the original supplier, is supposedly SDA free. If animals were ordered from Kingston, they were likely to develop SDA symptoms after arrival. The group considered ordering animals from CR's Portage facility, where animals would already have been exposed to SDA.

The decision was made to stay with Kingston since Bio/dynamics has been getting animals from there for the last nine months and has not experienced any problems. To insure the animals will be SDA-free when the exposure begins, animals will be acclimated for three weeks.

ARC 035844

ARCO-1-A
(6-79)

File, MTBE
March 31, 1981
Page 2

The concentrations of MTBE given in the justification document which were said to produce narcosis were questioned by C. Conoway. I said I would check them.

Details of the study monitoring by Tracor-Jitco will be sent to members by API.

The dates of the reproductive studies depend on when the nine-day probe study is completed.

At my suggestion, a complete water analysis will be done in the middle of the teratology study. This is required by GLP's.

Metabolism Studies

The methods development segment of the metabolism studies is completed. It has been found that the majority of MTBE is eliminated via the lungs within an hour after dosing in the aqueous soluble phase.

Since problems were encountered with hemolysis when MTBE was given I.V., future studies will use the I.P. method of dosing.

Nine-Day Inhalation Study

Prestudy work with the chambers and analytical methods has been completed. The material is being atomized without heating, to consistently generate levels of 100, 300, 1000 and 3000 ppm.

Chamber concentrations will be analyzed using I.R. For future studies, an online GC analysis will be available. Analysis will be done automatically every 15 minutes for 100, 300, and 1000 ppm and manually every 1/2 hour for 3000 ppm.

Bio/dynamics recommends eliminating the charcoal grab samples of chamber concentration. This was accepted by the group since the accuracy of these samples is questionable.

Tracor-Jitco will monitor the study once during early exposures and the day of necropsy. C. Kerwin, of Phillips Oil will also monitor the study during the necropsies.

Mr. Van Dyke of Bio/dynamics raised a point which deserves further consideration. The metabolic studies which have shown most of the MTBE blown off in the first hour have been done in an unsaturated atmosphere. However, all the toxicity studies will be done in atmospheres in which MTBE concentration is quite high, preventing MTBE from being eliminated so rapidly or completely. This may change the pharmacokinetic profile of

ARC 035845

File, MTBE
March 31, 1981
Page 3

MTBE and result in the metabolic studies not giving an accurate profile of MTBE's fate in the rat. Mr. Van Dyke felt the group may want to do future metabolic work in an MTBE saturated atmosphere. However, the group felt the planned metabolic studies should be completed before considering Mr. Van Dyke's suggestion.

It would appear that the unsaturated atmosphere in the metabolic studies more closely approximates the atmosphere workers will be exposed to.

Overall, I think the planned MTBE studies are moving along very well. If we could be assured of receiving accurate and regular progress reports from Dr. S. Ridlon, I do not think our presence would be necessary at the group meetings since ARCO seems adequately represented by Dr. Ridlon.

cc: J. A. Budny
RNR:mp

ARC 035846

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

SOUTH TAHOE PUBLIC UTILITY
DISTRICT,
Plaintiff

VS.

NO. 999128

ATLANTIC RICHFIELD COMPANY ("ARCO");
ARCO CHEMICAL COMPANY; SHELL OIL
COMPANY; CHEVRON U.S.A., INC.;
EXXON CORPORATION; B.P. AMERICA,
INC.; TOSCO CORPORATION; ULTRAMAR,
INC.; BEACON OIL CO.; USA
GASOLINE CORPORATION; et al.,
Defendants

COPY

VIDEOTAPED DEPOSITION OF

BEN THOMAS, Ph.D.

November 15, 2000

Portions of this transcript contain confidential
documents, information or other things.

VIDEOTAPED DEPOSITION OF BEN THOMAS, Ph.D., produced
as a witness at the instance of the plaintiff, was taken
in the above styled and numbered cause on November 15,
2000, from 10:15 a.m. to 4:50 p.m., before Kay Howell,
Certified Shorthand Reporter in and for the State of
Texas, reported by machine shorthand, at Doubletree
Hotel, 400 Dallas, Houston, Texas.

DEPOSITION OF BEN THOMAS, Ph.D.

89

14:10:33 1 A. Only in detail. I'm afraid I don't remember him.

(:10:39 2 Q. Were you a member of the Toxicology Committee
14:10:42 3 until you left Shell in 1990?

14:10:45 4 A. I was.

5 (Marked Thomas Exhibit No. 5.)

14:11:15 6 Q. (BY MR. SHER) I'm handing you a copy of what
14:11:17 7 I've marked as Exhibit 5 to your deposition. This is on
14:11:24 8 Atlantic Richfield Company letterhead. It's internal
14:11:29 9 correspondence dated March 31, 1981, from R. N. Roth to
14:11:34 10 file, MTBE, and it's Bates stamped ARC 035844 through 46.
14:11:40 11 Let's go off the record so you can have a chance to look
14:11:43 12 this over.

14:11:44 13 THE VIDEOGRAPHER: The time is 2:11 p.m.
14 (Discussion off the record.)

14:14:52 15 THE VIDEOGRAPHER: Back on the record at
14:14:53 16 2:14 p.m.

14:14:54 17 Q. (BY MR. SHER) Have you had a chance to look over
14:14:57 18 Exhibit 5 while we were off the record?

14:14:59 19 A. I have.

14:14:59 20 Q. Do you have any recollection in the first part of
14:15:03 21 1981 being involved with a group known as the MTBE Study
14:15:09 22 Group?

14:15:09 23 A. This memorandum refreshes my memory, yes.

14:15:12 24 Q. What is your recollection about that?

(:15:14 25 A. This was some early studies. As I recall, they

DEPOSITION OF BEN THOMAS, Ph.D.

90

14:15:19 1 were -- it was a program ongoing when I joined the
(14:15:22 2 committee, or at least under discussion when I joined the
14:15:26 3 Toxicology Committee. You know, I apparently have sent
14:15:32 4 information over to Randy Roth of Arco saying that we are
14:15:36 5 involved with a contamination of a township's drinking
14:15:42 6 water with disopropyl ether and MTBE at 100 part per
14:15:45 7 billion. And I reflect the information that I had, that
14:15:48 8 20 percent of all underground storage tanks leak, leading
14:15:53 9 to the possibility of groundwater contamination.

14:15:53 10 Q. In the middle of the page there is a reference
14:15:55 11 that says to date Shell and Arco are the only ones with
14:15:59 12 MTBE in gasoline. Do you see that?

14:16:00 13 A. I do.

14:16:01 14 Q. Do you have a recollection of a time when Shell
14:16:03 15 and Arco were the only companies with MTBE in their
14:16:07 16 gasoline?

14:16:09 17 A. I know Shell was a user of MTBE, but I don't know
14:16:13 18 what other companies used it.

14:16:16 19 Q. Are you aware that over the course of the 80's
14:16:19 20 other companies also started using MTBE?

14:16:23 21 A. Yes.

14:16:23 22 Q. Can you recall when the additional companies
14:16:30 23 started using MTBE in rough terms?

14:16:33 24 A. No, but I would assume it was in the mid-1980's,
(14:16:37 25 mid to late 1980's.

DEPOSITION OF BEN THOMAS, Ph.D.

162

1 STATE OF TEXAS)
2 COUNTY OF HARRIS)

3 REPORTER'S CERTIFICATION

4 TO THE DEPOSITION OF BEN THOMAS, Ph.D.

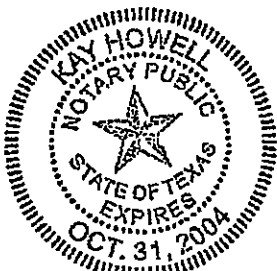
5 Taken on November 15, 2000

6
7 I, KAY HOWELL, Certified Shorthand Reporter in and for
8 the State of Texas, hereby certify that this deposition
9 transcript is a true record of the testimony given by the
10 witness named herein, after said witness was duly sworn
11 by me.

12 I further certify that I am neither attorney nor counsel
13 for, related to, nor employed by any of the parties to
14 the action in which this testimony was taken. Further, I
15 do not have any existing or past financial, business,
16 professional, family, or social relationships with any of
17 the parties or their attorneys which to some might
18 reasonably create an appearance of partiality.

19 Upon conclusion of the deposition, the deponent
20 requested the opportunity to review the transcript and
21 make changes in form or substance.

22 Subscribed and sworn to on this the 27th day of November,
23 2000.



Kay Howell

KAY HOWELL, CSR, RPR, FAPR
Supreme Court of Texas
Certification No. 501
Expiration: 12-31-02

Dickman Davenport, Inc.
3000 Carlisle, Suite 113
Dallas, Texas 75204
214-855-5100

DICKMAN DAVENPORT, INC.

(214) 855-5100

www.dickmandavenport.com

(800) 445-9548

ARCO Chemical Company

Internal Correspondence

MAT-9

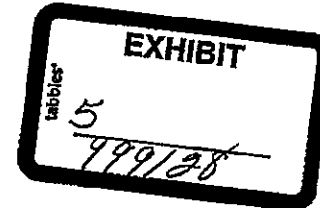


Date: June 14, 1984

Subject: API MTBE Meeting Highlights

From/Location: B. K. Hoover

To/Location: S. A. Ridlon



A meeting of the API Ad Hoc Committee on MTBE was held in Washington on June 12, 1984. Those in attendance included: F. B. Thomas (Shell), C. C. Conaway (Texaco), S. T. Cragg (API), E. Seibert (Huls), C. Kirwin (Phillips), R. C. Anderson (API), S. C. Lovre (ARCO), S. A. Ridlon (ARCO Chemical), and B. K. Hoover (ARCO Chemical).

The status of the composite final report of the API studies was discussed. Although the report was generally good, some committee members had minor comments that they would like to have the laboratory address. It was decided that these remaining comments would be sent to API staff for submission to the laboratory. The report was given provisional approval providing that the laboratory address these comments either by letter or by changes in the report.

Dr. Conaway expressed a desire to submit these studies for publication to the Journal of Environmental Health and Toxicology. Authorship on the various papers was determined. Dr. Conaway stated that he had asked Larry Andrews of ARCO to review the metabolism study and prepare a draft for publication. ARCO is currently reviewing this request since problems noted in that study may make it less suitable for publication. Dr. Conaway also asked Dr. Ridlon of ARCO to review the possibility of publishing the acute studies that it submitted to the committee as background for the API work.

The future plans of the group were considered. It was decided that no attempt would be made to pursue plans to perform any new metabolism study. The cost of future work as well and the qualitative data obtained in the earlier metabolic study were cited as reasons for this decision.

MTBE is a possible contaminant of groundwater, especially in association with leaking gasoline storage tanks. Dr. Conaway expressed a desire to obtain taste and odor threshold data for MTBE. Dr. Thomas explained that he is chairman of the API task force on groundwater contamination. Their plans are presently only tentative due to a need for greater direction from API management committees. He stated that oxygenates such as MTBE were considered proprietary and not sufficiently generic to the industry to be considered in an API project at the present time. He further indicated that the Environmental Biology and Community

ARC 035448

S. A. Ridlon
June 14, 1984
Page 2

Health Committee of API is considering taste and odor problems associated with the soluble components of gasoline. They may be willing to consider MTBE, as well as other oxygenates, on their list of contaminants for study. The Ad Hoc Committee decided to make their remaining funds available to that group providing that they specifically study MTBE and that they are allowed to review and comment on the proposal prior to the initiation of work. If this is not possible, they instructed API to distribute the remainder of the money back to each member company serving on the MTBE committee.

On other matters, the committee decided to dispose of the radio-labelled tissues from the metabolism study pending appropriate file documentation. They decided to ask API to make arrangements to store data and specimens from all MTBE studies at Experimental Pathology Laboratories in Herndon, Virginia. A request was made to API to revisit Bio/dynamics to quality assure the portions of the studies that were rejected during previous audits. If API needs assistance in this area, ARCO agreed to send B. K. Hoover to aid in this effort. ARCO staff reported on the latest information on a possible TLV for MTBE which is being considered by ACGIH. A draft document has been prepared along with a recommended TLV for consideration by the full committee of ACGIH at their next meeting. This TLV is expected to be in the range of 300-500 ppm which is consistent with other ethers and above current workplace exposures.

It was decided that it would not be necessary for the Ad Hoc Committee to meet again since it had completed its mission. The meeting was adjourned at noon.

BKH:mrr

[API/MTBE/MTG]

ARC 035449

MEMORANDUM

Mr. B. Baggott
 Mr. L. W. Long
 Mr. C. R. Hart (Southwest Region, Marketing)

F 9/02/

MDN

JFYI

March 26, 1991

You may be interested
 in these documents, which
 Furman Foster (Northwest
 Region Gen. Mgr.) reviewed

CHEMICAL ENTRY REVIEW
 FOR MTBE

A. L. Perkins: From Salt Lake Refinery. (2-12-91)

I have completed the environmental group's portion of the chemical entry review for MTBE. Bill Davis has previously completed his Safety Review. I will include a copy of this memo with the chemical review materials that still must be reviewed by Earl Shirts before they are returned to Bill Davis and then to you.

We understand that you are preparing for possible entry of MTBE into the refinery (or marketing) and simply wanted to develop our concerns for using this material. Whether the facilities are installed by marketing or the refinery, our concerns listed below are the same, especially since we currently treat marketing's waste water and have some responsibilities for fighting fires at the marketing terminal.

Bill Davis and I have signed the chemical entry review sheet allowing MTBE entry into the refinery subject to the following conditions:

1. Meet Bill Davis' safety concerns (attached).
2. Meet the following environmental concerns.
 - A. Spills or leaks of MTBE must be contained and prevented from contacting the ground or entering the waste water drainage system. This requirement includes above-ground impoundments at the unloading area to prevent hose disconnection spills. Sample stations also need to be engineered to prevent spills. Impoundments should be sealed like our hazardous waste pad.
 - B. Contaminated soil or water that has contacted MTBE or other oxygenates will likely be a hazardous waste because of the low flash points. Proper disposal procedures should be established and published.
 - C. Tanks containing MTBE should have double bottoms and leak detection systems.
 - D. Provide proper facilities for shutdowns and tank cleaning to prevent any MTBE from being spilled or washing into the drainage system.
 - E. Complete a HAZOP study on the planned facilities

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during the design phase of the project. Safety and environmental concerns should be included in this study.

The attached memo from the El Segundo environmental group discusses the environmental effects of MTBE and Methanol. These chemicals are different than any other stocks that we have handled in the refinery before and consideration needs to be given towards mitigation of extreme environmental risks.

I will pass this information on to Earl Shirts for his review. Please see me if you have any questions.

Jeff Johns

Attachments

cc: RER, MGE, MDM, TUF, JWJ, SLR, MRS, WRD, MLP

CH 00716

PROOF OF SERVICE VIA LEXISNEXIS FILE AND SERVE

I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein referred to, over the age of 18 years and not a party to this action. My business address is 1050 Fulton Avenue, Suite 100, Sacramento, CA 95825-4225.

On the date below, I served the following document on all counsel in *City of Fresno v. Chevron U.S.A., Inc., et al.*, Case No. 04 Civ 4973 (SAS), electronically through LexisNexis File & Serve:

**DECLARATION OF MICHAEL AXLINE IN SUPPORT OF PLAINTIFF
CITY OF FRESNO'S OPPOSITION TO CERTAIN DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFF'S
NUISANCE**

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on May 15, 2013, at Sacramento, California.


KATHY HERRON